This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

LA 9613.1

Harvard College Library

FROM THE

UNITED STATES GOVERNMENT

THROUGH

The Library of Congress.

SA 5-13-1

58TH CONGRESS, 2d Session. | SENATE. | DOCUMENT No. 316.

VENEZUELAN ARBITRATIONS OF 1903,

INCLUDING

PROTOCOLS, PERSONNEL AND RULES OF COMMISSIONS, OPINIONS, AND SUMMARY OF AWARDS, WITH APPENDIX CONTAINING VENEZUELAN YELLOW BOOK OF 1903, BOWEN PAMPHLET ENTITLED "VENEZUELAN PROTOCOLS," AND "PREFERENTIAL QUESTION" HAGUE DECISION, WITH HISTORY OF RECENT VENEZUELAN REVOLUTIONS.

Prepared by

JACKSON H. RALSTON,

Late Umpire of the Italian-Venezuelan Mixed Claims Commission,

Assisted by

W. T. SHERMAN DOYLE,

Late Assistant Agent of the United States, American Commission, and Netherlands Agent, Netherlands Commission.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1904.

5 A 9613.11

1120
57

DEC 3 1904
CAMBRIDGE, MASS.

Library of Congress

PREFACE.

The summer of 1903 saw collected at Caracas ten full commissions appointed to adjudicate claims of as many nations against Venezuela, and also the commissioners of an eleventh (French) commission. Before these various bodies were presented for consideration many most interesting questions of international law, touching perhaps all of the problems likely to prove sources of difficulty between European and North American nations on the one hand and the South American Republics on the other.

As a matter of public importance, it was determined to collect a permanent memorial of the work at Caracas in the shape of the present volume, the Senate ordering its printing.

It has been the aim of the editor to include herein all opinions, save those turning on questions of facts exclusively, and it is believed this end has been attained, the paucity of opinions from certain commissions before which many cases were presented being accounted for by the fact that some commissioners or umpires wrote none or practically none.

The tables of awards were furnished by the Venezuelan foreign office, and certain opinions presented by the Venezuelan Commissioners in the American and English Commissions are printed as filed at Caracas.

For courtesies extended in the preparation of this work, the writer acknowledges with pleasure his personal indebtedness to Secretary Hay, Solicitor W. L. Penfield, and Mr. Andrew H. Allen, chief of the Bureau of Rolls and Library, and many other officials of the Department of State; to Sr. Gustavo J. Sanabria, secretary of foreign relations for Venezuela; Minister H. W. Bowen and former Chargé d'Affaires W. W. Russell, American representatives at Caracas. For translations from the Italian he is greatly obligated to Mr. William Giusta, of Washington, D. C. The writer is also indebted to Mr. W. T. Sherman Doyle, formerly assistant agent of the United States, American-Venezuelan Commission, and Netherlands agent of the Netherlands-Venezuelan Commission, for translations from the Spanish, and constant and most valuable assistance in the editorial work. Mr. Rudolf Dolge, secretary of the American Commission; Mr. Ward Fitzsimmons, secretary of Mr. Bainbridge, Commissioner of the American Commission, and Mr. J. Earl Parker, secretary of Mr. Plumley, umpire of the English and Netherlands Commissions, kindly furnished many copies of opinions and much needed additional information.

JACKSON H. RALSTON.

WASHINGTON, D. C., *October 31, 1904.*

TABLE OF CONTENTS.

	Page.
Preface	III
Table of cases reported	XIII
Table of authorities cited	XIV
Table of cases cited	XXVI
American Commission	1–259
Protocol	1
Personnel	5
Rules	5
Opinions:	
Dix case—	
Bainbridge, American Commissioner (for Commission)	7
De Garmendía case—	
Bainbridge, American Commissioner (for Commission)	10
Heny case—	
Bainbridge, American Commissioner	14
Paúl, Venezuelan Commissioner	18
Barge, umpire	22
Boulton, Bliss & Dallett case—	
Paúl, Venezuelan Commissioner (for Commission)	26
Alliance case—	
Bainbridge, American Commissioner (for Commission)	29
Mark Gray case—	
Bainbridge, American Commissioner (for Commission)	33
American Electric and Manufacturing Company case (damages to property)—	
Paúl, Venezuelan Commissioner (for Commission)	35
Lasry case—	
Bainbridge, American Commissioner (for Commission)	37
Flutie cases—	
Bainbridge, American Commissioner (for Commission)	38
Underhill cases—	
Bainbridge, American Commissioner	45
Paúl, Venezuelan Commissioner	45
Barge, umpire, in re G. F. Underhill	47
Barge, umpire, in re J. L. Underhill	49
Turini case—	
Bainbridge, American Commissioner	51
Paúl, Venezuelan Commissioner	54
Barge, umpire	60
Kunhardt & Co. case—	
Bainbridge, American Commissioner (for Commission)	63
Paúl, Venezuelan Commissioner (concurring)	70
Orinoco Steamship Company case—	
Bainbridge, American Commissioner	73
Grisanti, Venezuelan Commissioner	76
Barge, umpire	83
Appendix—	
Memorial	97
Brief of United States agent	107
Answer of Venezuelan agent	113
Replication of United States agent	119
Roberts case—	
Bainbridge, American Commissioner (for Commission)	142
Jarvis case—	
Bainbridge, American Commissioner (for Commission)	145

American Commission—Continued. Page.
Opinions—Continued.
Woodruff case—
Bainbridge, American Commissioner ... 151
Paúl, Venezuelan Commissioner ... 154
Barge, umpire ... 158
Spader et al. case—
Bainbridge, American Commissioner (for Commission) ... 161
Torrey case—
Paúl, Venezuelan Commissioner (for Commission) ... 162
Gage case—
Bainbridge, American Commissioner ... 164
Paúl, Venezuelan Commissioner ... 165
Barge, umpire ... 166
Anderson case—
Bainbridge, American Commissioner (for Commission) ... 167
Thomson-Houston International Electric Company case—
Paúl, Venezuelan Commissioner (for Commission) ... 168
Bullis case—
Bainbridge, American Commissioner (for Commission) ... 169
Monnot case—
Bainbridge, American Commissioner (for Commission) ... 170
Bance case—
Paúl, Venezuelan Commissioner (for Commission) ... 172
Upton case—
Bainbridge, American Commissioner (for Commission) ... 172
Del Genovese case—
Paúl, Venezuelan Commissioner (for Commission) ... 174
La Guaira Electric Light and Power Company case—
Bainbridge, American Commissioner (for Commission) ... 178
Rudloff case (interlocutory) ... 182
Bainbridge, American Commissioner ... 183
Paúl, Venezuelan Commissioner ... 189
Barge, umpire ... 192
Rudloff case (on merits)—
Bainbridge, American Commissioner (concurring) ... 194
Grisanti, Venezuelan Commissioner (for Commission) ... 199
Turnbull; Manoa Company (Limited), and Orinoco Company (Limited) ... 200
Bainbridge, American Commissioner ... 201
Grisanti, Venezuelan Commissioner ... 228
Barge, umpire ... 239
American Electric and Manufacturing Company case (concession)—
Grisanti, Venezuelan Commissioner ... 246
Barge, umpire ... 247
Raymond et al. case—
Bainbridge, American Commissioner (for Commission) ... 250
Grisanti, Venezuelan Commissioner (concurring) ... 255
Volkmar case—
Bainbridge, American Commissioner (for Commission) ... 258
Summary of claims ... 260
Belgian Commission ... 261–291
Protocol ... 261
Personnel ... 265
Opinions:
Paquet case (expulsion)—
Goffart, Belgian Commissioner ... 265
Grisanti, Venezuelan Commissioner ... 266
Filtz, umpire ... 267
Paquet case (concession)—
Goffart, Belgian Commissioner ... 267
Grisanti, Venezuelan Commissioner ... 268
Filtz, umpire ... 269
Postal case—
Goffart, Belgian Commissioner ... 270
Grisanti, Venezuelan Commissioner ... 270
Filtz, umpire ... 271

Belgian Commission—Continued. Page.
Opinions—Continued.
Waterworks case (interlocutory)—
Answer of Venezuelan agent 272
Goffart, Belgian Commissioner 272
Grisanti, Venezuelan Commissioner 274
Filtz, umpire 275
Waterworks case (on merits)—
Answer of Venezuelan agent 276
Goffart, Belgian Commissioner 278
Grisanti, Venezuelan Commissioner 283
Filtz, umpire 289
Summary of claims 291
British Commission 292–480
Protocol, February 13, 1903 292
Protocol, May 7, 1903 294
Personnel 295
Rules 296
Opinions (interlocutory):
Crossman case—
Plumley, umpire 298
De Lemos case (first reference to umpire)—
British agent 302
Grisanti, Venezuelan Commissioner 302
Plumley, umpire 306
De Lemos case (second reference to umpire)—
British agent 310
Grisanti, Venezuelan Commissioner 315
Plumley, umpire 319
Selwyn case—
Plumley, umpire 322
Stevenson case—
Plumley, umpire 327
Topaze case—
Plumley, umpire 329
Opinions on merits:
Asphalt Company case—
Plumley, umpire 332
Kelly case—
Plumley, umpire 340
Aroa Mines case—
British agent 344
Grisanti, Venezuelan Commissioner 348
Plumley, umpire 350
Bolívar Railway case—
Plumley, umpire 388
Santa Clara estates case—
Plumley, umpire 397
Davis case—
Plumley, umpire 402
Feuilletan case—
Plumley, umpire 406
Cobham case—
Plumley, umpire 409
Davy case—
Plumley, umpire 410
Motion for interest on awards—
Plumley, umpire 413
Diplomatic debt case—
Plumley, umpire 423
Mathison case—
British agent 429
Grisanti, Venezuelan Commissioner 430
Plumley, umpire 433
Stevenson case—
British agent 439
Grisanti, Venezuelan Commissioner 440
Plumley, umpire 442

British Commission—Continued. Page.
Opinions on merits—Continued.
Puerto Cabello and Valencia Railway case—
Plumley, umpire 455
Summary of claims 480
French-Venezuelan Commission 483–510
Protocol, Febuary 27, 1903 483
Personnel 486
Opinions:
Acquatella, Bianchi et al. case—
Paúl, Venezuelan Commissioner (claim referred to umpire) 487
Summary of claims 490
Appendix to French-Venezuelan Commission 494–510
Protocol, February 19, 1902 494
Personnel 496
Opinions:
Leduc, St. Ives, Fischer & Co. case—
Paúl, Venezuelan Commissioner (for Commission) 497
Rogé case—
Paúl, Venezuelan Commissioner (for Commission) 497
Decauville & Co. case—
Paúl, Venezuelan Commissioner (for Commission) 499
Lalanne & Ledour case—
Paúl, Venezuelan Commissioner (for Commission) 501
Ballistini case—
Paúl, Venezuelan Commissioner (for Commission) 503
Daniel case—
Paúl, Venezuelan Commissioner (for Commission) 507
Summary of claims 510
German Commission 511–542
Protocol, February 13, 1903 511
Protocol, May 7, 1903 515
Personnel 518
Rules 518
Opinions:
Christern, Becker, Fischbach, Friedericy, Kummerow, and Daumen cases.
Duffield, umpire 520
Kummerow, Otto Redler & Co., Fulda, Fischbach, and Friedericy cases 526
Goetsch, German Commissioner (Kummerow) 527, 531
Zuloaga, Venezuelan Commissioner (Kummerow) 529, 535
Goetsch, German Commissioner (Otto Redler & Co.) 539
Zuloaga, Venezuelan Commissioner (Otto Redler & Co.) 541
Goetsch, German Commissioner (Fulda) 542
Zuloaga, Venezuelan Commissioner (Fulda) 544, 545
Goetsch, German Commissioner (Fischbach and Friedericy) 547
Zuloaga, Venezuelan Commissioner (Fischbach and Friedericy) . 548
Duffield, umpire 549
Valentiner case—
Duffield, umpire 562
Van Dissel & Co., case—
Goetsch, German Commissioner 565
Zuloaga, Venezuelan Commissioner 568
Duffield, umpire 568
Mohle case—
Duffield, umpire 574
Richter case—
Duffield, umpire 575
Metzger case—
Duffield, umpire 578
Bischoff case—
Duffield, umpire 581
Flothow case—
Duffield, umpire 582
Brewer, Moller & Co., first case—
Duffield, umpire 584

German Commission—Continued. Page.
Opinions—Continued.
Christern & Co. case—
Duffield, umpire 584
Orinoco asphalt case—
Duffield, umpire 586
Wenzel case—
Duffield, umpire 590
Brewer, Moller & Co., second case—
Duffield, umpire 595
Christern & Co. (liquidators) case—
Duffield, umpire 597
Beckman & Co. case—
Duffield, umpire 598
Faber case—
Goetsch, German Commissioner 603, 614
Zuloaga, Venezuelan Commissioner 608, 618
Duffield, umpire 620
Plantagen Gesellschaft case—
Duffield, umpire 631
Summary of claims 641
Italian-Venezuelan Commission 643–871
Protocol, February 13, 1903 643
Protocol, May 7, 1903 645
Personnel 647
Rules 647
Opinions (questions of procedure):
Time for presentation of claims—
Ralston, umpire 648
Extension of time for submission—
Ralston, umpire 650
Time for submitting evidence—
Agnoli, Italian Commissioner 651
Ralston, umpire 652
Burelli case—
Agnoli, Italian Commissioner 655
Zuloaga, Venezuelan Commissioner 656
Ralston, umpire 656
Opinions (of a general nature):
Cervetti case—
Agnoli, Italian Commissioner 658
Zuloaga, Venezuelan Commissioner 661
Ralston, umpire 662
Postal treaty case—
Ralston, umpire 665
Sambiaggio case—
Agnoli, Italian Commissioner 666
Zuloaga, Venezuelan Commissioner 673
Zuloaga, Venezuelan Commissioner (second) 677
Ralston, umpire 679
Mazzei case—
Ralston, umpire 693
De Zeo case—
Ralston, umpire 693
Boffolo case—
Zuloaga, Venezuelan Commissioner 696
Agnoli, Italian Commissioner 697
Ralston, umpire 699
Massardo, Carbone & Co. case—
Agnoli, Italian Commissioner 706
Zuloaga, Venezuelan Commissioner 708
Ralston, umpire 709
Brignone case—
Agnoli, Italian Commissioner 710
Ralston, umpire 715
Gentini case—
Agnoli, Italian Commissioner 720

Italian-Venezuelan Commission—Continued. Page.
Opinions (of a general nature)—Continued.
Gentini case—Continued.
Zuloaga, Venezuelan Commissioner ... 723
Agnoli, Italian Commissioner (second) ... 724
Ralston, umpire ... 724
Guastini case—
Agnoli, Italian Commissioner ... 730
Zuloaga, Venezuelan Commissioner ... 745
Ralston, umpire ... 747
Revesno et al. case—
Ralston, umpire ... 753
Guerrieri case—
Ralston, umpire ... 753
Miliani case—
Agnoli, Italian Commissioner ... 754
Agnoli, Italian Commissioner (second) ... 757
Ralston, umpire ... 759
Petrocelli case—
Ralston, umpire ... 762
Tagliaferro case—
Ralston, umpire ... 764
Giacopini case—
Ralston, umpire ... 765
Bottardo case—
Ralston, umpire ... 768
Di Caro case—
Ralston, umpire ... 769
Cesarino case—
Ralston, umpire ... 770
Oliva case—
Agnoli, Italian Commissioner ... 771
Zuloaga, Venezuelan Commissioner ... 777
Agnoli, Italian Commissioner (second) ... 778
Ralston, umpire ... 779
Corvaïa case—
Agnoli, Italian Commissioner ... 782
Zuloaga, Venezuelan Commissioner ... 795
Agnoli, Italian Commissioner (second) ... 799
Ralston, umpire ... 802
De Caro case—
Agnoli, Italian Commissioner ... 810
Zuloaga, Venezuelan Commissioner ... 815
Ralston, umpire ... 816
Martini case—
Agnoli, Italian Commissioner ... 820
Zuloaga, Venezuelan Commissioner ... 833
Ralston, umpire ... 837
Poggioli case—
Agnoli, Italian Commissioner ... 848
Zuloaga, Venezuelan Commissioner ... 858
Ralston, umpire ... 863
Summary of claims ... 871
Mexican-Venezuelan Commission ... 875–888
Protocol ... 875
Personnel ... 879
Rules ... 879
Opinion:
Del Rio case—
Summary of claim ... 880
Gaytán de Ayala, umpire ... 882
Summary of claims ... 888
Netherlands-Venezuelan Commission ... 889–917
Protocol ... 889
Personnel ... 893
Rules ... 893

Netherlands-Venezuelan Commission—Continued. Page.
Opinions:
J. N. Henriquez case—
Plumley, umpire 896
Bembelista case—
Plumley, umpire 900
Salas case—
Plumley, umpire 903
Evertsz case—
Plumley, umpire 904
Baasch & Römer case—
Plumley, umpire 906
J. M. Henriquez case—
Plumley, umpire 910
Arends case—
Plumley, umpire 912
Spanish-Venezuelan Commission 917–944
Protocol 917
Personnel 921
Opinions (on procedure):
Extension of time for submission—
Gutierrez-Otero, umpire 921
Opinions (of a general nature):
Padrón case—
Gutierrez-Otero, umpire 923
Lozano case—
Gutierrez-Otero, umpire 930
Mena case—
Gutierrez-Otero, umpire 931
Franqui case—
Gutierrez-Otero, umpire 934
Corcuera case—
Gutierrez-Otero, umpire 936
Sanchez case—
Gutierrez-Otero, umpire 937
Betancourt case—
Gutierrez-Otero, umpire 939
Summary of claims 942
Swedish and Norwegian-Venezuelan Commission 945–954
Protocol, March 10, 1903 945
Personnel 949
Opinions:
Christina case—
Gaytán de Ayala, umpire 949
Bovallins & Hedlund case—
Gaytán de Ayala, umpire 952
Summary of claims 954
Appendix 955–1066
Venezuelan yellow book 955–1028
Bowen correspondence 1029–1057
Award of Hague Tribunal 1057
Wars of Venezuela, 1898–1903 1060–1066
Index 1067

CASES REPORTED.

	Page.
Acquatella	487
Alliance	29
American Electric and Manufacturing Company	85, 246
Anderson	167
Anker	953
Arends	912
Aroa mines	344
Asphalt company	332
Bassch & Römer	906
Ballistini	503
Bance	172
Becker	520
Beckman	598
Bembelista	900
Betancourt	939
Bianchi	467
Bignoso	753
Bischoff	581
Boffolo	696
Bolivar Railway	388
Bottardo	758
Boulton, Bliss and Dallett	26
Bovallina	952
Brewer, Moller & Co	584, 595
Brignone	710
Brion (*see* Spader)	161
Bullis	169
Burelli	655
Casale	487
Cervetti	658
Cesarino	770
Christern	520, 584
Christern & Co (liquidators)	597
Christina	949, 953
Cobham	409
Compagnie Générale des Asphaltes de France	331
Compagnie Générale des Eaux de Caracas	271
Corcuera	936
Corvaia	782
Daniel	507
Daumen	520
Davis	402
Davy	410
De Caro	810
Deeanville	499
De Garmendia	10
De Lemos	802, 810
Del Genovese	174
Del Rio	880
De Zeo	698
Di Caro	769
Diplomatic debt to England	423
Dix	7
Evertsz	904
Extension of time for submission	650
Faber	608
Fanti	758
Feuilletan	406
Fischbach	520, 526
Fischer	497
Flotbow	582
Flutie, Elias A	38
Flutie, Emilia A	38
Franqui	934
Friedericy	520, 526
Gage	164
Gentini	720
Giacopini	765
Guastini	730
Guerrieri	758
Hedlund	952
Henriquez, J. M	910
Henriquez, J. N	896
Henry	14
Inseo & Abreu	487

	Page.
Jarvis	145
Johnson & Johnson (*see* Bance)	172
Kelly	340
Kummerow	520, 526
Kunhardt & Co	63
La Guaira Electric Light and Power Company	178
Lalanne & Ledour	501
Lasry case	87
Leduc, St. Ives, Fischer & Co	497
Leonardi	487
Lozano	930
Madsen & Jesperson	954
Manoa Company (Limited)	201
Marchiero	753
Mark Gray	33
Martini	820
Massardo, Carbone & Co	706
Mathison	429
Mazzei	693
Meling	954
Mena	931
Metzger	578
Miliani	754
Mohle	574
Monnot	170
Motion for interest on awards	413
Oliva	771
Orinoco asphalt	586
Orinoco Company (Limited)	201
Orinoco Steamship Company	73
Padrón	928
Paquet	266, 267
Petrocelli	762
Pietrantoni & Co	487
Pietrantoni frères	487
Plantagen Gesellschaft	631
Poggi	487
Poggioli	848
Postal administration of Belgium	270
Postal treaty case (Italy)	665
Puerto Cabello and Valencia Railway	455
Raymond	250
Revesno	753
Richter	575
Roberts	142
Rogé	497
Römer	906
Rudloff	182
Salas	908
Sambiaggio	666
Sanchez	937
Santa Clara estates	397
Seabury & Johnson (*see* Bance)	172
Segurani	487
Selwyn	322
Spader	161
Stevenson	327, 439
St. Ives	497
Stiz	753
Tagliaferro	764
Time for presentation of claims	648
Time for submitting evidence	651
Topaze	329
Torrey	162
Turini	51
Turnbull	201
Underhill, George F	45
Underhill, Jennie L	49
Upton	172
Valentiner	562
Volkmar	258
Waterworks of Caracas	272
Weeks, Potter & Co. (*see* Bance)	172
Wenzel	590
Woodruff	151
Ydun Ins. Co	954

TABLE OF AUTHORITIES CITED.

Page.

Alauzet:
De la Qualité de Français et de la Naturalization, sec. 85 806
American and English Encyclopedia of Law:
Vol. VIII, p. 673, 2d ed 565
Vol. VIII, p. 692 581
Vol. XVI, pp. 999, 1001, 1002, 1003, 1005, 1006 421
Vol. XVI, pp. 1007, 1013, 1014, 1015, 1052 422
Vol. XVI, p. 1052 424
Vol. XVI, pp. 1062, 1088, 1090 425
Vol. XXI, p. 732 844
Vol. XXIII, p. 612, 1st ed 466
Annales de Droit Commercial:
(1890), Vol. II, p. 257 ..... 907, 908
Annuaire de Législation Étrangère:
(1889), p. 806 907
(1890), p. 918 907
Annuaire de l'Institut de Droit International:
Vol. VIII, p. 272 603
Vol. XVII 666
Vol. XVIII, p. 254 ..... 733, 749, 928
Arminjon:
Nationalité des Personnes Morales, Revue de Droit International, 1902, Vol. IV, 2d series 1, p. 381 906
Asser et Rivier:
Éléments de Droit International Privé, p. 197 907
Aubry:
Domaine de la Loi d'Autonomie (Journal de Droit International Privé, 1896, p. 465) 908
Autobiography of Gen. Antonio Páez, Vol. II, p. 469 149
Bar:
Revue de Droit International, 1899, p. 464 666
International law—
Sec. 47 908
Sec. 104 908
Sec. 122 908
Barkowski:
Journal de Droit International Privé (1891), p. 712 907
Baudry-Lacantinerie:
Précis du Droit Civil, Vol. 3, No. 624 80
Belgian Civil Code:
Art. 1271 285
Art. 1278 285
Art. 1653 280
Art. 2279 274
Bello:
Derecho International (4th ed.)—
Page 42 725
Page 119 ..... 316, 317
Best:
Evidence, p. 83 602
Blackstone (Cooley's):
Vol. I, p. 366 435
Vol. I, p. 369 ..... 434, 435, 788
Vol. I, p. 373 ..... 434, 435
Vol. IV, p. 67 354
Bluntschli:
Droit International Codifié—
Sec. 81 612
Sec. 221 601
Sec. 279 726
Sec. 314 ..... 611, 627
Sec. 366 111
Sec. 374 ..... 445, 716, 761
Sec. 380 ..... 111, 683, 848
Sec. 383 701
Sec. 384 ..... 701, 702
Sec. 462 ..... 669, 685
Sec. 472 612
Sec. 769 603
Boistel, sec. 396 907
Bolivian Civil Code:
Art. 1169 136

	Page.
Bonfils:	
Manuel de Droit International Public, 3e éd.—	
Sec. 330	867
Sec. 524	608
Sec. 1062	318
Sec. 1231	304, 318
Bourguignon & Bergerol:	
Dic. des. Syn.—	
Verb. Principe	725
Verb. Règle	725
Boutwell's Report:	
Page 83	448
Bouvier, Law Dictionary (Rawle's):	
Verb. Agreement	353
Verb. Consideration	150
Verb. Construction	353, 358
Verb. Contract	352, 353, 354
Verb. Damages	356
Verb. *de facto*	750
Verb. Equity	386
Verb. Injury	356
Verb. International law	387
Verb. Interpretation	353, 358
Verb. Laches	406, 728
Verb. Limitation	727
Verb. Municipal corporation	181
Verb. Negligence	406
Verb. Prescription	727
Verb. Property	188
Verb. Search warrant	357
Verb. Seizure	357
Verb. Treaty	354
British and Foreign State Papers:	
Vol. 35, p. 301	923
Vol. 53, p. 1050	385, 900, 925, 929
Vol. 54, p. 1330	385, 900
Vol. 63, p. 211	422
Vol. 74, p. 298	385, 900
Vol. 75, p. 39	385, 900
Vol. 77, p. 1090	385, 900
Vol. 79, p. 632	385, 900
Vol. 84, p. 187	385, 900
Vol. 84, p. 144	384
Brocher:	
Droit International Privé, p. 321	725
Revue de Droit International (1872), p. 189	908
Burke:	
Works, vol. 7, p. 94	725
Burlamaqui:	
Droit de la Nat. et des Gens, Vol. IV, pt. 3, chap. 2	848
Bynkershoek:	
Bk. II, chap. 3	684
California Code of Civil Procedure:	
Art. 2083	602
Calvo:	
Dictionary of International Law—	
Verb. Allegiance	788
Verb. Expulsion	701
Le Droit International, Théorique et Pratique—	
Sec. 363, 3d ed	303
Sec. 364, 3d ed	303
Sec. 612	601
Sec. 1942, 3d ed., Vol. III	306
Sec. 371, 3d ed	305
Sec. 715, 3d ed., Vol. I	316
5e éd. (preface, p. 1)	925
Sec. 86	684
Sec. 171	725
Sec. 547	432
Sec. 549	432
Sec. 451	31
Sec. 848	718
Sec. 1263	695, 867
Sec. 1278	691
Sec. 1292	929
Sec. 1650	739
Sec. 1751	927
Revue de Droit International, Vol. I, p. 417	666
Carathéodory:	
Le Droit International Concernant les Grands Cours d'Eau (1861), pp. 107, 116, 117	608
Pages 139–141	607
Page 155	606
Chilean Civil Code:	
Art. 1489	136
Arts. 1699—1707	600
Code Napoleon:	
Art. 17	796
Art. 18	796
Art. 1184	135
Art. 2219	726

Page.

Code. (*See* under various countries.)
Cogordan:
La Nationalité—
Sec. 1, p. 25 ... 756
Sec. 8 ... 761
Coke (Moore, 4187) ... 725
Colombian Civil Code:
Art. 1758–1766 ... 600
Constitution of Venezuela:
Art. 6 ... 429, 433, 437, 818
Art. 7 ... 434, 437
Art. 8 ... 760
Art. 9 ... 429, 436
Art. 10 ... 429, 436
Art. 11 ... 818
Art. 13 ... 211, 687
Art. 14 ... 376
Art. 16 ... 376
Art. 17 ... 136
Art. 43 ... 211
Art. 54 ... 594
Art. 66 ... 211
Art. 69 ... 211
Art. 80 ... 211, 213
Art. 140 ... 376
Constitution of Venezuela (1881), art. 66 ... 231
Constitution of Venezuela (1893):
Art. 13 ... 703
Art. 14 ... 703
Art. 23 ... 704
Art. 44 ... 231
Art. 77 ... 703
Art. 78 ... 703
Contuzzi:
Il Codice Civile nel Rapporti Diritto Internazionale, p. 61 n ... 806
Convention of Paris, 1854 ... 842
Cook on Corporations:
5th ed., Vol. II, p. 1165 ... 466
5th ed., Vol. II, pp. 1166–1170 ... 478
Cooley:
Constitutional Limitations, p. 70 ... 353
Torts, p. 630 ... 406
Cours de Droit International Privé, p. 315 ... 908
Creasy:
International Law, p. 343 ... 868
Crommelin:
De Verplichtingen van Nederland als Neutrale Mogenheid ten Opzichten der Scheldc, p. 71 . 603
Cruchaga:
Nociones de Derecho Internacional, sec. 177 ... 700
Cuban Code of Civil Procedure:
Art. 577 ... 600
Art. 595 ... 600
Art. 601 ... 600
Despagnet:
Droit International Public, p. 353 ... 488, 684
Précis, sec. 64 ... 907
Dicey:
Conflict of Laws, p. 154 ... 908
Dillon:
Municipal Corporations, sec. 66 ... 181
Domat:
Civil and Public Law ... 162, 521, 725
Dumond:
On French Code, art. 2223 ... 721
Dutch Civil Code, art. 1302 ... 136
Engelhardt:
Du Régime Conventionnel des Fleuves Internationaux—
Pages 24, 25, 27, 172, 182, 219 ... 603
Escriche:
Diccionario Razonado de Legislación y Jurisprudencia—
Verb. Caso fortuito ... 683
Verb. Reclamación ... 355
Evarts, William M. (Moore, 2599–2600) ... 42, 185
Executive Document 320, 27th Cong., 2d sess., p. 185 ... 184
Felice:
Droit de la Nature, Vol. II, sec. 15 ... 848
Field:
International Code, art. 172 ... 601
Fiore:
Diritto Internazionale Privato—
Sec. 103 ... 715
Sec. 109 ... 715
Sec. 330 ... 756
Sec. 333 ... 756
Sec. 344 ... 785
Sec. 345 ... 785
La France Judiciaire—
X. 1, p. 192 ... 933
X. 1, p. 198 ... 933

	Page.
Fiore—Continued.	
Nouveau Droit International Public—	
Vol. 1, p. 113 (ed. Pradier-Fodéré)	761
Vol. 2, p. 150 (ed. Pradier-Fodéré)	907
Sec. 645	685
Sec. 651	685
Sec. 651	848
Sec. 656	685
Sec. 657	685
Sec. 660	670
Sec. 665	298
Sec. 666	670
Sec. 671	685
Sec. 672	670
Sec. 673	546, 674, 678
Sec. 674	308
Sec. 675	304
Secs. 758–768	627
Sec. 773	612
Sec. 815	81
Sec. 1012	743
Sec. 1036	782
Sec. 1037	789
Sec. 1569	546, 679
Folleville:	
La Naturalization—	
Sec. 374	788
Sec. 449	806
Sec. 450	806
Sec. 458	806
Sec. 454	806, 808
Fonblanque on Equity, p. 320	225
Foreign Relations of the United States:	
American State Papers—	
Vol. I, p. 147	140
Vol. VI, p. 764	607
Vol. VI, p. 796	355
1871, p. 25	41
1888, p. 1377	580
1898, p. 737	130
1895 p. 775, 801	700, 915
1899, p. 576	752
1901, p. 270	110
1901, Appendix, p. 107	950
1902, p. 389	41, 659
1902, p. 838	72
1902, p. 857	67
1902, p. 871	67, 112, 125, 128, 213
Foster, Federal Practice, 2d ed.:	
Page 502	602
Page 1267	602
French Civil Code:	
Art. 1141	274
Arts. 1317–1333	600
Art. 1658	280
Art. 1890	80
Art. 2227	723
German Civil Code:	
Art. 80–88	906
Art. 160	186
Glass:	
Marine International Law, pp. 105–107	337
Grandgaignage:	
Histoire du Péage de l'Escaut, pp. 88, 89	603
Grecian Code of Commerce, art. 37	907
Greenleaf on Evidence:	
Vol. I, sec. 1	380
Vol. 1, chap. 3	602
Sec. 177	602
Sec. 321	602
Sec. 446	602
Groot, Vol II, p. 3	606
Grotius:	
De Jure Belli ac Pacis—	
Bk. I, chap. 4	141
Bk. II, chap. 2	606
Bk. II, chap. 4	725
Bk. II, chap. 16	558
Bk. II, chap. 25	684
Guatemalan Civil Code, art. 1467	136
Guillaume, l'Escaut depuis 1830, Vol. I, pp. 358, 400	603
Hale's Pleas of the Crown:	
Page 68	435
Hall:	
International Law, 4th ed.—	
Page 1	185, 387
Sec. 5	140, 684
Sec. 5 (p. 37, n.)	567

Hall—Continued. Page.
International Law, 4th ed.—Continued.
Sec. 9 ... 334
Sec. 25 ... 140
Sec. 36 ... 725
Sec. 39 ... 629, 630
Sec. 63 ... 701
Sec. 65 ... 10, 165, 373, 381, 578, 688, 868, 898
Sec. 68 ... 337
Sec. 87 ... 182, 379
Sec. 87, p. 294 n ... 278
Sec. 106 ... 339
Sec. 111 ... 354
Sec. 167 ... 43
Sec. 186 ... 314
Sec. 247 ... 140
Halleck:
International Law—
Vol. I, p. 129 ... 899
Chap. 2, sec. 1 ... 386
Chap. 3, sec. 20 ... 684
Chap. 6, sec. 23 ... 628
Chap. 8, sec. 39 ... 312, 316
Chap. 11, sec. 6 ... 848
Chap. 11, sec. 7 ... 868
Chap. 13, sec. 4 ... 111
Chap. 13 ... 326
Harriman on Contracts, p. 33 ... 150
Heffter:
International Law—
Sec. 77 ... 606, 627
Sec. 216 ... 601
Holland:
Studies in International Law—
Page 160 ... 379
Page 169 ... 386
Page 195 ... 379
Page 199 ... 354, 379
Italian Civil Code:
Art. 4 ... 760, 792
Art. 5 ... 792
Art. 7 ... 718
Art. 8 ... 714, 715, 718
Art. 9 ... 716, 793
Art. 10 ... 802
Art. 11 ... 798, 805
Art. 13 ... 808
Art. 14 ... 716, 792
Art. 754 ... 717
Art. 923 ... 718
Art. 1126 ... 274
Art. 1151 ... 673, 789, 749
Art. 1152 ... 749
Art. 1165 ... 135
Art. 1575 ... 846
Art. 2109 ... 720
Art. 2114 ... 723
Art. 2135 ... 723
Italian Commercial Code, sec. 230 ... 907
Jacques:
La Loi du Domicile et la Loi de la Nationalité en Droit International Privé (article in 18 Revue de Droit International, p. 563) ... 710
Journal de Droit International Privé:
(1875) p. 348 ... 907
(1875) p. 80 ... 908
(1879) p. 396 ... 908
(1881) p. 262 ... 908
(1883) p. 315 ... 908
(1883) p. 316 ... 908
(1885) p. 192 ... 907
(1888) p. 488 ... 907
(1889) p. 59 ... 907
(1890) p. 739 ... 908
(1891) p. 6 ... 701
(1891) p. 712 ... 907
(1891) p. 1241 ... 908
(1892) p. 584 ... 908
(1892) p. 585 ... 908
(1894) p. 640 ... 907
(1896) p. 138 ... 908
(1896) p. 465 ... 908
(1897) p. 158 ... 908
(1897) p. 364 ... 908
(1898) p. 40 ... 907
(1898) p. 341 ... 908
(1898) p. 758 ... 908
(1899) p. 203 ... 701
(1899) p. 328 ... 908
(1900) p. 443 ... 907
(1900) p. 657 ... 908
(1900) p. 802 ... 908

Page

Journal des Sociétés (1880), p. 36 907
Kent:
Commentaries—
Vol. 1, p. 138, n 16
Vol. 1, p. 2 386
Vol. I, sec. 23 ..... 684, 804
Klüber, sec. 76 628
Laurent:
Cours Élémentaire de Droit Civil—
Vol. I, p. 22 348
Vol. I, p. 389 908
Vol. I, p. 404 906
Vol. 24, p. 472 80
Vol. 32, p. 23 727
Vol. 32, p. 565 275
Lawrence:
Law of Claims—
Page 218 421
Page 219 522
Page 220 522
Page 232 522
Page 274 902
Page 275 902
Lawrence:
The Principles of International Law—
Sec. 1 387
Sec. 7 684
Sec. 229 902
Sec. 272 337
Lehr:
Éléments de Droit Civil Anglais—
Pages 21, 23 432
Sec. 38 788
Louisiana Civil Code, art. 2234 600
Louisiana Code of Procedure:
Sec. 425 602
Sec. 426 602
Sec. 430 602
Sec. 434 602
Lyon-Caen:
Journal de Droit International Privé (1880), p. 36 907
Lyon-Caen et Renault:
Traité de Droit Commercial—
Sec. 1167 907
Sec. 1168 907
Vol. 2, p. 824 908
Magnette:
Joseph II et La Liberté de l'Escaut, p. 17 608
Maine:
Ancient Law, p. 280 725
Manual of the Institute of International Law:
Art. 32 901
Markby:
Elements of Law, chap. 13 725
Martens, Charles de:
Causes célèbres du Droit des Gens, Vol. III, p. 338 608
Martens:
International Law—
Vol. II, p. 56 81
Vol. 3, ch. 3, p. 299 111
Précis—
Sec. 79-82 684
Sec. 84 628
Mérignhac:
Traité de l'Arbitrage International—
Sec. 272 934
Sec. 305 ..... 692, 927
Mexican Civil Code:
Arts. 1465, 6 136
Mexican Code of Civil Procedure, art. 289 600
Morawitz:
Corporations, sec. 640 750
Moore (*see also* Table of Cases Cited):
History and Digest of International Arbitrations—
Page 875 420
Page 656 122
Page 690 420
Page 1004 659
Page 1242 ..... 184, 355
Page 1254 659
Page 1317 420
Page 1358 ..... 78, 450, 809
Page 1361 659
Page 1381 659

Moore—Continued. Page.
History and Digest of International Arbitrations—
Page 1444 ... 548
Page 1624 ... 533
Page 1631 ... 691
Page 1698 ... 528, 543
Page 1702 ... 544
Page 1716 ... 534
Page 1718 ... 534, 606
Page 1723 ... 669, 676
Page 1730 ... 592
Page 1865 ... 187
Page 2254 ... 809
Page 2277 ... 824
Page 2331 ... 449
Page 2348 ... 74, 121
Page 2350 ... 122
Page 2351 ... 711
Page 2360 ... 123
Page 2398 ... 710
Page 2457 ... 437, 444
Page 2483 ... 78
Page 2549 ... 454
Page 2553 ... 454
Page 2564 ... 448
Page 2599 ... 42
Page 2600 ... 42
Page 2753 ... 809
Page 2757 ... 809
Page 2900 ... 382, 681
Page 2902 ... 681
Page 2969 ... 592
Page 2972 ... 382
Page 2978 ... 382
Page 2977 ... 382
Page 2981 ... 898
Page 2982 ... 382
Page 2989 ... 382
Page 3119 ... 340
Page 3235 ... 412, 581
Page 3265 ... 581
Page 3545 ... 522
Page 3564 ... 91
Page 3566 ... 186
Page 3571 ... 110
Page 3615 ... 355
Page 3621 ... 354
Page 3628 ... 354
Page 3624 ... 340
Page 3926 ... 781
Page 4179 ... 730
Page 4208 ... 162
Page 4325 ... 420
Page 4327 ... 119, 420
Page 4504 ... 558
Page 4590 ... 357
Page 4595 ... 420
Page 4612 ... 340
Page 4617 ... 340
Page 4627 ... 525
Page 4629 ... 420
Page 4690 ... 601
Page 4810 ... 419
Nesselrode, Count:
Letter of 1850 in relation to Leghorn riots ... 304
New York Code of Procedure:
Sec. 872 ... 602
Sec. 873 ... 602
Sec. 875 ... 602
Sec. 879 ... 602
Sec. 881 ... 602
Sec. 882 ... 602
Nys:
Les Fleuves Internationaux, Revue de Droit International (1903), p. 517 ... 608
Opinions of Attorneys-General:
Vol. 9, p. 359 ... 807
Vol. 9, p. 426 ... 335
Vol. 11, p. 452 ... 141
Vol. 13, p. 376 ... 41
Vol. 13, p. 547 ... 869
Vol. 14, p. 295 ... 45, 807
Orban:
Etude du Droit Fluvial International, p. 140 ... 608
Páez, General Antonio:
Autobiography of, Vol. II, p. 469 ... 149

Page.

Palmerston, Lord:
Circular letter of January, 1848 278
Papers Relating to Treaty of Washington, Vol. VI, pp. 158, 252–254 337
Pasicrisie (1888), Vol. II, p. 203 907
Philippine Code of Civil Procedure:
Art. 577 600
Art. 595 600
Art. 601 600
Phillimore:
International Law—
Vol. I, p. 62 354
Vol. I, p. 154 379
Vol. IV, p. 178 43
Vol. I, p. 189 606
Vol. I, p. 190 ..... 629, 630
Vol. I, p. 207 628
Vol. I, p. 255 848
Vol. I, p. 272 725
Vol. I, p. 307 727
Vol. I, p. 345 434
Vol. II, p. 8 111
Vol. II, p. 64 436
Vol. II, p. 81 438
Vol. II, p. 86 438
Vol. II, p. 98 354
Vol. III, p. 42 588
Vol. IV, p. 245 716
Pédelièvre:
Précis de Droit International Public ou Droit des Gens, Vol. II, p. 375 608
Pineau:
Des Sociétés Commerciales en Droit International Privé 908
Pinheiro-Ferreira:
Vol. II, p. 5 684
Planiol:
Traité de Droit civil, secs. 2017–2019 906
Polson:
Law of Nations, p. 28 725
Porto Rican Code of Civil Procedure:
Art. 577 600
Art. 595 600
Art. 601 600
Portuguese Commercial Code, art. 109 907
Postal Convention 270
Pradier-Fodéré:
Public International Law—
Sec. 408 826
Sec. 405 278
Sec. 749 611
Sec. 1183 ..... 689, 788
Sec. 1857 266
Prontuario de Los Juicios (Chile), Law XXIII, tit. 16, par. 8 602
Puffendorf:
Bk. III, chap. 3 606
Bk. VIII, chap. 6, sec. 14 684
Ralston:
Report as American Agent in Pious Fund case 720, 721, 725
Revised Statutes of the United States:
Sec. 1088 602
Sec. 2170 42
Sec. 5283 149
Sec. 5286 149
Revue de Droit International:
Vol. I, p. 157 842
Vol. IV, p. 189 908
Vol. VII, p. 280 984
Vol. VII, p. 281 927
Vol. VII, p. 714 489
Vol. XVIII, p. 159 603
Vol. XVIII, p. 563 710
Vol. XX, p. 498 700
Vol. XXIX 666
Vol. III (2d series) 608
Vol. IV (2d series), p. 881 906
Vol. V (2d series), p. 517 603
Revue Générale de Droit International Public (1897), p. 406 666
Rivier:
Principes du Droit des Gens—
Vol. I, pp. 221, 225 608
Rolin-Jaequemyns:
Comments on Becker (Revue de Droit Int., 1875, p. 714) 489
Droit d'expulsion des étrangers (Rev. de Dr. Int., Vol. XX, p. 498) 700
Rolin:
Principes de Droit International Privé—
Sec. 251–291 908
Sec. 1278 907

Page.
Roumanian Commercial Code:
Art. 239 907
Art. 244 907
Rutherford:
Institutes—
Bk. I, chap. 17, sec. 5 521
Bk. II, chap. 9 ..... 684, 848
Sala:
Illustration of Spanish Law, Bk. II, tit. 2 725
Saleilles:
Étude sur la Théorie de l'Obligation, 2d ed., p. 151 908
Savigny:
Droit Romain—
Sec. 237 726
Sec. 245 726
Sec. 366, Vol. 8 16
Sec. 377 718
Scott's Cases on International Law, p. 731 141
Sedgwick on Damages:
Sec. 69 16
Sec. 191 564
Sec. 202 563
Sec. 316 18
Sec. 320 522
Sec. 609 12
Sec. 697 521
Seijas:
Derecho Internacional—
Vol. I, p. 50 ..... 537, 674
Vol. I, p. 57 ..... 536, 537, 673, 674
Vol. I, p. 340 ..... 433, 445
Vol. III, p. 588 683
Vol. III, p. 553 304
Spanish Civil Code:
Art. 1124 136
Spanish Code of Civil Procedure:
Arts. 577, 595, 601 600
Spanish Treaty Claims Commission:
Opinion No. 8 ..... 488, 559, 682
Story:
Conflict of Laws—
Sec. 46 43
Sec. 71 443
Surville et Arthuys:
Cours de Droit International Privé—
Sec. 456 907
Taparelli:
Natural Law, Vol. 2, p. 979 725
Tchernoff:
Protection des Nationaux Résidant à l'Étranger—
Page 309 933
Page 311 933
Page 337 684
Page 378 927
Page 392 927
Page 450 701
Page 470 761
Thaller:
Traité, sec. 625 908
Traité de Droit Commercial, Vol. II, sec. 1167 906
Treaties and Conventions of the United States with Other Powers, 1776–1887 ..... 148, 156, 421, 600, 607
Troplong:
Droit Civil Expliqué, title Prescription, 2d ed 727
Troplong on Prescription:
Sec. 89 721
Sec. 91 721
Truchy:
Des Fondations, p. 159 908
Twiss:
Law of Nations—
Sec. 21 684
Sec. 144 445
Sec. 145 628
Two Sicilies, Code of:
Art. 20 805
United States and Venezuelan Claims Commission (1890):
Opinions, p. 445 158
Opinions, p. 450 155
United States and Venezuelan Claims Commission (1892):
Agent's Report, p. 11 685
Record, pp. 454, 488 337
Record, p. 516 382
Record, p. 520 379
Record, p. 585 374
U. S. Sen. Doc. 264, 57th Cong., 1st Sess 688
Uruguayan Civil Code:
Art. 1392 136

Page.

Van Dyne:
Citizenship of the United States—
Page 77 ... 454
Pages 275-278 ... 807
Vareilles-Sommières:
Droit International Privé—
Secs. 396, 401, 402 ... 906
Sec. 1503 ... 906
Vol. II, pp. 71, 78 ... 907
Vattel:
Law of Nations—
Bk. I, chap. 23 ... 629
Bk. I, sec. 244 ... 327
Bk. II, sec. 56 ... 684
Bk. II, chap. 6 ... 439, 446
Bk. II, chap. 6, sec. 71 ... 843
Bk. II, chap. 6, secs. 72, 74 ... 326
Bk. II, sec. 72 ... 848
Bk. II, chap. 8 ... 111
Bk. II, sec. 123 ... 606
Bk. II, sec. 132 ... 606
Bk. II, sec. 133 ... 606
Bk. II, sec. 134 ... 606
Bk. II, chap. 11, sec. 140 ... 725
Bk. II, sec. 141 ... 725
Bk. II, sec. 264 ... 556, 557, 714, 738
Droit des Gens—
Bk. II, sec. 264 ... 556, 689, 714, 738
Bk. II, chap. 17 ... 354
Bk. II, sec. 283 ... 184
Bk. III, sec. 282 ... 902
Vavasseur:
Des Sociétés, sec. 957 ... 908
Venezuelan Civil Code:
Art. 8 ... 286, 718
Art. 17 ... 793
Art. 18 ... 716, 792
Art. 19 ... 716
Art. 691 ... 67, 188
Art. 719 ... 717
Art. 894 ... 580, 718
Art. 896 ... 580
Art. 1100 ... 274
Art. 1116 ... 579, 678
Art. 1118 ... 579
Art. 1191 ... 271
Art. 1298 ... 621
Art. 1475 ... 285
Art. 1496 ... 80
Art. 1529 ... 846
Art. 1720 ... 500, 664
Art. 1881 ... 441
Art. 1883 ... 280
Art. 1888 ... 17, 80
Art. 1936 ... 723
Art. 1956 ... 723
Venezuelan Civil Code of 1881:
Art. 19 ... 441
Venezuelan Civil Code of 1896:
Art. 1097 ... 135
Art. 1098 ... 135
Art. 1099 ... 135
Art. 1101 ... 135
Art. 1131 ... 135
Venezuelan Code of Civil Procedure:
Art. 216 ... 191
Art. 492 ... 191
Art. 493 ... 184
Venezuelan Commercial Code:
Art. 133 ... 71
Art. 163 ... 65
Art. 195 ... 66
Art. 204 ... 66, 71
Venezuelan Financial Code:
Law XIV ... 618
Law XVI ... 404
Law XVIII ... 79, 618
Law XXI ... 235
Law XXIV ... 82
Law XXV ... 82
Law XXXIII ... 79, 618
Venezuelan Mining Code:
(March, 1883) ... 233
(November, 1883) ... 233
(1885) ... 233
(1887) ... 233

Page.

Vico:
De Uno Universi Juris, etc., p. 331 725
Walton:
Civil Law in Spain and Spanish America—
Sec. 1214 600
Sec. 1881 16
Webster, Daniel:
(Moore, 1242) 184, 355
Weiss, André:
Elementary Treatise on Public International Law—
Page 84 266
Page 418 907
Wharton:
Conflict of Laws—
Sec. 314 16
Sec. 320 16
Sec. 695 908
International Law Digest, 2d ed.—
Sec. 7 752
Sec. 8 ..... 354, 386
Sec. 30 629
Sec. 87 ..... 335, 336, 340
Sec. 123 386
Sec. 124 ..... 334, 335
Sec. 133 ..... 689, 788
Sec. 175 45
Sec. 206 ..... 700, 915
Sec. 215 354
Sec. 223 ..... 682, 898
Sec. 224 ..... 258, 259
Sec. 230 ..... iii, 127, 188
Sec. 238 ..... 326, 327
Sec. 241 325
Sec. 243 325
Sec. 248 ..... 182, 324, 325
Sec. 328 327
Sec. 329a 326
Sec. 342 337
Sec. 349 902
Sec. 359 ..... 337, 338
Sec. 361 ..... 337, 338, 587, 811
Sec. 389 141
Sec. 390 141
Sec. 391 141
Sec. 402a 379
Sec. 410 81
Appendix to International Law Digest—
Sec. 172a 379
Sec. 238 379
Sec. 239 ..... 162, 725
Sec. 242 325
Sec. 408 379
Wharton:
Law of Evidence—
Sec. 177 602
Wheaton (Boyd's):
Elements of International Law—
Page 22 925
Page 255 727
Page 396 ..... 312, 316
Page 543 313
Wheaton (Dana's):
Elements of International Law—
Note 15 684
Page 152n 389, 588
Wheaton (Lawrence's):
Elements of International Law—
Page 81 684
Page 116 20
Page 145n 902
Page 196 20
Page 218 ..... 587, 725
Page 229 629
Page 252 ..... 606, 629
Page 480 811
Page 526n 140
Page 819 141
Page 846n 141
History of the Progress of the Laws of Nations in Europe and America—
Vol. II, p. 192 608
Wiesse:
Droit International Appliqué aux Guerres Civiles 666
Wildman:
International Law—
Vol. I, p. 51 684
Vol. I, p. 57 684
Vol. I, p. 198 111

Page.
Winter-Haller:
Journal de Droit International Privé (1898), p. 40 907
Woolsey:
Introduction to International Law—
Secs. 2, 3 386
Sec. 29 354
Secs. 38-77 111
Sec. 62 628
Sec. 63 ..... 340, 702
Sec. 66 379
Sec. 113 ..... 354, 689, 738
Sec. 119 354
Sec. 208 386
Wurm:
Freedom of River Navigation, p. 55 607
Zacharie, Vol. III, p. 775 721

TABLE OF CASES CITED.

(See also under "Moore" in "Table of Authorities Cited.")

Page.

Abbiatti (Moore, 2347) 74, 77, 121, 759
Acquatella (herein, p. 487) 746
Active, The (24 Fed. Cases, 755) 354
Adams (Moore, 3065) 339
Adlam (Moore, 2562) 454
Alder *v.* Keighley (15 M. & W., 117) 12
Alexander (Moore, 2529) 717
Alleghanian (Moore, 1624) 533
Allen, Morgan County *v.* (130 U. S., 515) 353
Alsop (Moore, 1627) 324
Alvarez (Moore, 1353) 450
Amedy; United States *v.* (11 Wheaton, 409) 31
American Electric and Manufacturing Company (herein, 35) 763
Angarica (Moore, 2621) 42
Antrey (Moore, 3672) 357
Apollon, The (9 Wheaton, 362) 187, 379
Appleton, The (9 Wheaton, 362) 379
Arcambel *v.* Wiseman (3 Dall., 306) 565
Aroa mines (herein, 844) 748, 903, 923, 931
Arredondo, United States *v.* (6 Pet., 691) 75
Ashton (Moore, 3288) 330, 766
Aspinwall (Moore, 1015) 547, 557, 591
Atlellis (Moore, 3334) 702
Bacigalupi (Chilean Claims Commission, 1901) 910
Baker (Moore, 3668) 357
Baldwin (Moore, 3235) 581, 766
Baltimore, The (8 Wall., 377) 589
Baltimore Insurance Company (Moore, 2900) 382
Bank, Vorhees *v.* (10 Pet., 449) 356
Bank of England; City of Berne *v.* (9 Ves., 347) 899
Barberie (Moore, 4199) 162, 729
Baring, Merchants' Mutual Insurance Company *v.* (20 Wallace, 159) 254
Barnes (Moore, 3247) 766
Barrett (Moore, 2900) 898
Bath, Friquet *v.* (Burrows Rep., 1480) 354
Becker (Moore, 1353 and notes) 78
Beckman (herein, 598) 584, 585, 596
Belfast, etc., R. Co. *v.* Belfast (77 Me., 445). 466
Belfast *v.* Belfast, etc., R. Co. (77 Me., 445). 466
Bell, Wilson *v.* (20 Wallace, 201) 254
Bensley (Moore, 3018) 695, 867
Ben Tillet (Journal du Droit Int. Privé, Vol. XXVI) 701
Betsy, The (Moore, 2278) 75
Betsy, The (2 Cranch, 118) 354
Bingham *v.* Walla Walla (3 Washington, 68). 198
Bister (Moore, 2454) 444
Blumenkron (Moore, 3669) 357
Boffolo (herein, 696) 265, 914
Bond (Moore, 3591) 354, 355
Bond *v.* United States (19 Wall., 227) 355
Bottardo (herein, 768) 930
Bowley (Moore, 3032) 357
Boyne (Moore, 3923) 817
Brach (Moore, 3726) 357
Bradley, Noonan *v.* (9 Wall., 456) 353
Brain (Moore, 3278) 579
Brand (Moore, 2488) 717
Brignone (herein, p. 710) 760, 847, 866
Brissot (Moore, 2456) 444, 448, 449
Bronner (Moore, 1331) 325
Bruffy, Williams *v.* (96 U. S., 176) 17, 394
Buentello (Moore, 3670) 356
Burton *v.* Smith (13 Pet., 464) 254

Page.

Cahill (Moore, 3066) 695
Caldera (15 Court of Claims, 546) 380, 601, 622
Calderwood (Moore, 2486) 447, 717
Camy (Moore, 2398) 121, 710, 719
Canty (Moore, 3309) 330
Casanova (Moore, 3277) 766
Cauca Co., Colombia *v.* (190 U. S., 524) 524
Cervetti (herein, 658) 10
Chambers, Kennett *v.* (14 How., 38) 149
Champagne (3 Wall., 145) 574
Check (Moore, 1899) 111
Chilton, Healthfield *v.* (4 Burr., 2016) 379
Chinese Indemnity Commission (Moore, 4627) 525
Chopin (Moore, 2506) 428, 448, 455
Christern (herein, 584) 10
Cisneros (Moore, 2334) 78
City of Berne *v.* Bank of England (9 Ves., 347) 899
City R. Co. *v.* Citizens Street R. Co. (166 U. S., 557) 690
Citizens Street R. Co., City R. Co. *v.* (166 U. S., 557) 690
Claflin, Lincoln *v.* (7 Wall., 132) 522
Cleworth (Moore, 3675) 259, 901
Cole (Moore, 3670) 356, 357
Cole, People *v.* (43 N. Y., 508) 602
Colombia *v.* Cauca Co. (190 U. S., 524) 524
Compagnie Générale des Asphaltes de France (herein, 332) 817
Conor, Potomac *v.* (105 U. S., 630) 588
Corcuera (herein, 936) 939
Cordwell, Dowell *v.* (4 Sawyer, U. S. Cir. Ct., 228) 354
Corvaia (herein, 782) 78, 710, 720
Crabtree, McDaniel *v.* (21 Ark., 431) 563
Criado (Moore, 2624) 42
Crossman (herein, 298) 897
Crother (Moore, 2977) 382, 681, 898
Crowther (Moore, 3304) 330
Cummings (Moore, 2977) 681
Day *v.* Woodworth (13 How., 363) 565
De Caro (herein, 810) 331, 337, 586, 830, 842
Delagoa Bay Ry. Co. (For. Rel. U. S., 1902, 838; Moore, 1865) 72, 111, 123, 187, 719
Dewutz *v.* Hendricks (9 Moore, C. B. 586; S. C., 2 Bing., 314) 149
De Zeo (herein, 693) 862, 867, 869, 937
Dickens (Moore, 3027) 356
Dickson, United States *v.* (15 Pet., 165) 355
Divine (Moore, 2980) 382, 593, 681, 737, 898
Dix (herein, 7) 14, 17
Donnell (Moore, 3545) 522
Donoughho (Moore, 3012) 357
Dowell *v.* Cordwell (4 Sawyer, U. S. Cir. Ct., 228) 354
Driggs (Opinions United States and Venezuelan Commission, 1890, 404) 729
Dubos (Moore, 1171) 547
Dupont, Shanks *v.* (3 Pet., 243) 445, 557
Dutrieux (Moore, 3702) 901
Easton (Moore, 1629) 382, 528, 548, 659, 669, 676, 685
Edwards (Moore, 3268) 330
Elliott (Moore, 3720) 327
Emily B. Souder, The, *v.* Pritchard (17 Wall., 666) 254
Emerson *v.* Hall (13 Pet., 409) 355
Enterprise (Moore, 4349) 32

Page.
Erie Railroad, St. John v. (10 Blatch., 271; 22 Wall., 128) 466
Evertsz (herein, 904) 914
Faber (herein, 600) 87, 595, 768, 904, 930
Fabiani (Moore, 2915) 659
Flanagan, Bradley, Clark & Co. (Moore, 3564) 186
Flanders v. Tweed (15 Wall., 450) 565
Foote, Pennywhit v. (27 Ohio St., 600) 42
Forwood (Moore, 3307) 330
Fries, Hodges v. (34 Florida, 63) 781
Galaxy, The (Moore, 3265) 339
Garrison, (Moore, 4915) 659
Gentini (herein, 720) 142, 161, 764, 766, 767
Gertrude, The (3 Story's Rep., 68) 32
Giacopini (herein, 765) 142, 161, 764, 789, 862, 863, 870
Goodloe v. Rogers (9 La. Annual, 273) 563
Good Return, The (Moore, 2739) 151
Granite State (3 Wall., 310) 589
Grant v. United States (1 Court Claims Rep., 41) 36
Guastini (herein, 730) 402, 753, 754, 819, 829, 931
Guier v. O'Daniel (1 Binney, 349) 43
Hall, Emerson v. (13 Pet., 409) 355
Halstead (Moore, 3241) 356
Hammer (Moore, 2456) 444, 448, 449, 591, 716, 717, 847
Hanna (Moore, 2982) 382, 682, 898
Hargous (Moore, 2327) 449
Harmony, Mitchell v. (13 Howard, 115) ... 36, 327
Hauenstein v. Lynham (100 U. S., 483) 557
Hazlehurst v. The Lulu (10 Wallace, 192) .. 254
Healthfield v. Chilton (4 Burr., 2016) 379
Hendricks, Dewutz v. (9 Moore, C. B., 586; S. C., 2 Bing., 314) 149
Henriquez, J. M. (herein, 910) 143
Henriquez, J. N. (herein, 896). 748, 903, 904, 923, 931
Hernandez, Underhill v. (168 U. S., 250) 47
Hill (Moore, 1655) 765
Hilda (Moore, 3926) 781
Hodges v. Fries (34 Florida, 63) 781
Hollander (U. S. For. Rel., 1895, 775) 700
Hollins & McBlair (Moore, 3545) 522
Howard v. Stillwell, etc. (139 U. S., 199) 843
Humber Co., Trent v. (Eng. L. R., 4 Ch., 112). 588
Imina, The (3 Robinson, 168) 140
Jansen (Moore, 2902) 382, 681, 898
Jarrero (Moore, 2324) 449
Johnson (Moore, 3673) 357
Johnson (Moore, 1656) 847
Johnson (Moore, 3032) 695, 867
Jonan (Moore, 3251) 766
Jones (Moore, 3253) 766
Keighley, Alder v. (15 M. & W., 117) 12
Kennedy, National Bank of Metropolis v. (17 Wall., 19) 358
Kennett v. Chambers (14 How., 38) 149
King, Warren v. (108 U. S., 389) 466
Kuhnagel (Moore, 2647) 42
Kummerow (herein, 526) 382, 489, 748, 898, 903, 923, 931
Lagueruene (Moore, 3027) 357
Labuan (Moore, 3790) 339, 588, 811
Lasarte (Moore, 2390) 450
Lasry (herein, 37) 768, 930
Laurent (Moore, 2671) 42
Laurie (Moore, 2987) 382, 682, 898
Lavigne (Moore, 2454) 444
Lazare (Moore, 1753) 601
Lebret (Moore, 2505) 445, 447
Lee, The William (Moore, 3405) 339
Le More (Moore, 3311) 330
Lincoln v. Claflin (7 Wall., 132) 522
Livingston v. Story (11 Pet., 351) 16
Lizardi (Moore, 2483) 42, 446, 720, 809
Lulu, The, Hazelhurst v. (10 Wallace, 192) . 254
Lushington, Nesbitt v. (4 Term, 763) 899
Lynham, Hauenstein v. (100 U. S., 483) 557
Macedonian, The (Moore, 1466) 663
Main (21 Court of Claims Rep., 54) 602
Marks (Moore, 3722) 357
Martini (herein, 820) 185, 187, 331, 337, 586, 848, 870, 871
McDaniel v. Crabtree (21 Ark., 431) 563
MacDonald, (State Trials, 887) 434
McGrady (Moore, 2981) 382, 682, 898
McHugh (Moore, 3278) 579
McKeown (Moore, 3311) 330
Meda, The (Moore, 2739) 151
Meade (2 Court of Claims, 271) 330, 601
Medina (Moore, 2583) 42, 43, 622
Mena (herein, 931) 748
Merchants' Mut. Ins. Co. v. Baring (20 Wallace, 159) 254
Metzger v. Haiti (For. Rel. U. S., 1900, 270). 110
Miliani (herein, 754) 767, 847, 866
Mitchell v. Harmony (13 Howard, 115) 36, 327
Moliere (Moore, 3033) 357
Moliere (Moore, 3252) 766
Monmouth (Moore, 2923) 817
Monrow, Thompson v. (2 cal., '99) 419
Montejo (Moore, 3277) 330
Montgomery (Moore, 3272) 330
Montijo (Moore, 1421) 141, 525, 528, 543, 548, 591, 599, 601, 669, 676, 684
Monroe (Moore, 3300) 330
Morgan County v. Allen (130 U. S. 515) 358
Mossman (Moore, 4180) 728, 729
Mursi (herein, 849n.) 849
Murphy (Moore, 2262) 602
Myer v. Tupper (1 Black, 522) 254
National Bank of Metropolis v. Kennedy (17 Wall., 19) 358
Neptune, The (Moore, 3076) 324
Nereide, The (9 Cranch., 388) 354, 378, 379, 558
Nesbitt v. Lushington (4 Term, 763) 899
Newbrough v. Walker (8 Grattan, 16) 781
New Orleans v. Warner (176 U. S., 92) 526
Noonan v. Bradley (9 Wall., 394) 353
Norton v. Shelby Co. (118 U. S., 425) 751
O'Daniel, Guier v. (1 Binney, 349) 43
Oliva (herein, 771) 198, 265
Only Son, The (Moore, 3404) 339, 587, 811
Ophir, The (Moore, 3045) 340
Orient Mut. Ins. Co. v. Wright (1 Wall., 456). 358
Orinoco Steamship Co. (herein, 88) 809, 841
Padrón (herein, 923) 748, 931, 932
Panama Riot Claims (Moore, 1361) ... 548, 669, 685
Parr (Moore, 3302) 330
Patrick (Moore, 3287) 330
Patrick, Shedden v. (1 Macqueen's House of Lords' Cases, 611) 434
Peach v. Bath (Burrows Rep., 1480) 354
Pelletier (Moore, 1752) 601, 621
Pennsylvania, Prigg v. (16 Pet., 539) 354
Pennywhit v. Foote (27 Ohio St., 600) 42
People v. Cole (43 N. Y., 508) 602
Pietro, G. (39 Fed. Rep., 366) 588
Pious Fund (Sen. Doc. 28, 57th Cong., 2d sess.) 721, 722, 725
Pirates, United States v. (5 Wheaton, 184) .. 31
Poggioli (herein, 847) 592, 770, 952
Pope (Moore, 2972) 382, 681, 898
Potomac v. Conor (105 U. S., 630) 588
Powers (Moore, 3274) 330
Prats (Moore, 2886) 681
Price (Moore, 2565) 807
Prigg v. Pennsylvania (16 Pet., 539) 254, 354
Pritchard, The Emily B. Souder v. (17 Wallace, 666) 254
Putegnat (Moore, 3718) 36, 763
Rahming (Moore, 3282) 766
Reed & Fry (Moore, 3132) 324
Reid, Sledge v. (73 North Carolina, 440) 563
Resolution, The (2 Dall., 1) 379
Rice, United States v. (4 Wheaton, 246) 401, 751
Rice (Moore, 3248) 766
Riggs (Moore, 3668) 356
Roberts (herein, 143) 910
Rochereau (Moore, 3742) 522
Rogers, Goodloe v. (9 La. Annual, 273) 563
Rozas (Moore, 3124) 330
Ruden (Moore, 1653) 847
Rudloff (herein, 183) 325, 841
Russell, United States v. (13 Wall., 623) 327
Salas (herein, 903) 923, 931
Sally, The (Moore, 2304) 324
Salvador Commercial Company (For. Rel. U. S., 1902, 857-873) 67, 72, 111, 213
Sambiaggio (herein, 666) 381, 488, 499, 747, 753, 754, 782, 809, 810, 898, 903, 923, 931
Sanchez (herein, 935) 198
Santangelo (Moore, 2549) 454
Santos (Moore, 1579) 547
Sartori (Moore, 3120) 325
Schlinger (Moore, 3671) 357
Schreiber (Moore, 2350) 122, 711

Page.

Schrigley (Moore, 3711) 8, 17, 69, 602
Schultz (Moore 2978) 382, 681, 898
Selwyn (herein, 332) 841
Shanks *v.* Dupont (3 Pet., 243) 445, 557
Shattuck (Moore, 3668) 356
Shaver (Moore, 3285) 766
Shawe (Moore, 3265) 581
Shedden *v.* Patrick (1 Macqueen's House of Lords Cases, 611) 434
Shelby Co. Norton *v.* (118 U. S., 425) 751
Shelton *v.* Tiffin (6 How., U. S., 163) 43
Sherman (Moore, 3278) 579
Silva (Moore, 2979) 382, 681, 898
Sledge *v.* Reid (78 North Carolina, 440) 563
Smith, Burton *v.* (13 Pet., 464) 254
Smith (Moore, 3374) 171
Smith (Moore, 3310) 330
Smith, Thorington *v.* (8 Wall., 9) 899
Southard, Wayman *v.* (10 Wheaton, 30) 355
Spader (herein, 161) 142, 729
Stevenson (herein, 442) 809
Stewart (Moore, 2989) 682, 898
Stillwell, etc., Howard *v.* (139 U. S., 199) 843
St. John *v.* Erie Railroad (10 Blatch., 271; 22 Wall., 128) 466
Story, Livingston *v.* (11 Pet., 351) 16
Stovin (Moore, 3283) 766
Sturm (Moore, 2757) 809
Tagliaferro (herein, 764) 142, 161, 767, 789
Texan Star (Moore, 2360) 123, 710, 711, 719
Thompson *v.* Monrow (2 Cal., 99) 419
Thompson *v.* Whitman (18 Wall., 457) 41
Tongue (Moore, 3675) 259
Thorndike (Moore, 2274) 602
Thorington *v.* Smith (8 Wall., 9) 899
Tiffin, Shelton *v.* (6 How., 163) 43
Tillet, Ben (Journal du Droit Int. Privé, Vol. XXVI) 701
Topaze (herein, 329) 765
Trent *v.* Humber Co. (Eng. L. R., 4 Ch., 112) 588
Triquet *v.* Bath (Burrows Rep., 1480) 354
Trumbull (Moore, 3569) 110
Trumbull, U. S. *v.* (48 Fed. Rep., 99) 141
Tupper, Myer *v.* (1 Black, 522) 254
Turnbull (herein, 201) 841
Tweed, Flanders *v.* (15 Wall., 450) 565
Underhill *v.* Hernandez (168 U. S., 250) 47
Union Pacif. Railway *v.* United States (99 U. S., 402) 466

Page.

United States *v.* Amedy (11 Wheaton, 409) 81
United States *v.* Arredondo (6 Pet., 691) 75
United States, Bond *v.* (19 Wall., 227) 355
United States *v.* Dickson (15 Pet., 165) 355
United States *v.* Pirates (5 Wheaton, 184) 81
United States *v.* Rice (4 Wheaton, 246) 401, 751
United States *v.* Russell (13 Wall., 623) 327
United States *v.* Trumbull (48 Fed. Rep., 99) 141
United States, Union Pacific Railway *v.* (99 U. S., 402) 466
Upham (Moore, 4179) 780
Valentiner (herein, 562) 631, 779
Van Bokkelen (Moore, 1852) 547, 766
Van Dissel (herein, 565) 590
Venezuela Steam Transportation Company (Moore, 1698) 180, 337, 528, 533, 543, 544, 547, 548, 592, 669
Virgin, The (8 Pet., 538) 254
Voorhees *v.* Bank (10 Pet., 449) 355
Walker, Newbrough *v.* (8 Grattan, 16) 781
Walla Walla, Bingham *v.* (3 Washington, 68 198
Walsh (Moore, 2978) 382, 681, 898
Ward (Moore, 3734) 525
Warner, New Orleans *v.* (176 U. S., 92) 526
Warren *v.* King (108 U. S., 389) 466
Wayman *v.* Southard (10 Wheaton, 30) 355
Well (Moore, 1327) 356
Weile (Moore, 1653) 547
Weile (Moore, 1646) 765
Whitman, Thompson *v.* (18 Wall., 457) 41
Willet (Moore, 2254) 809
William Lee (Moore, 3405) 339, 588, 811
Williams (Moore, 3119) 330
Williams (Moore, 4181) 724, 728
Williams (Moore, 4194) 780
Williams *v.* Bruffy (96 U. S., 176) 17, 394
Wilson (Moore, 3674) 357
Wilson (Moore, 3021) 357
Wilson *v.* Bell (20 Wallace, 201) 254
Wiseman, Arcambel *v.* (3 Dall., 306) 565
Wright, Orient. Mut. Ins. Co. *v.* (1 Wall., 456) 353
Woodruff (Moore, 3564) 91
Woodworth, Day *v.* (13 How., 363) 565
Wulff (Moore, 1353) 450
Wyman (Moore, 2978) 382, 681, 898
Young (Moore, 2752) 78, 809
Young, Smith & Co. (Moore, 3148) 325
Zaldivar (Moore, 2982) 382, 682, 898
Zerman (Moore, 3348) 702

VENEZUELAN ARBITRATIONS.

AMERICAN-VENEZUELAN MIXED CLAIMS COMMISSION.

PROTOCOL, FEBRUARY 17, 1903.

Protocol of an Agreement between the Secretary of State of the United States of America and the Plenipotentiary of the Republic of Venezuela for submission to arbitration of all unsettled claims of citizens of the United States of America against the Republic of Venezuela.

The United States of America and the Republic of Venezuela, through their representatives, John Hay, Secretary of State of the United States of America, and Herbert W. Bowen, the Plenipotentiary of the Republic of Venezuela, have agreed upon and signed the following protocol.

ARTICLE I.

All claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the commission hereinafter named by the Department of State of the United States or its Legation at Caracas, shall be examined and decided by a Mixed Commission, which shall sit at Caracas, and which shall consist of two members, one of whom is to be appointed by the President of the United States and the other by the President of Venezuela.

Protocolo de un Convenio entre el Secretario de Estado de los Estados Unidos de América y el Plenipotenciario de la República de Venezuela para la sumisión á arbitraje de todas las reclamaciones pendientes de ciudadanos de los Estados Unidos de América contra la República de Venezuela.

Los Estados Unidos de América y la República de Venezuela, por medio de sus representantes, John Hay, Secretario de Estado de los Estados Unidos de América, y Herbert W. Bowen, Plenipotenciario de la República de Venezuela han convenido en el siguiente protocolo, que han firmado.

ARTÍCULO I.

Todas las reclamaciones poseidas por ciudadanos de los Estados Unidos de América contra la República de Venezuela, que no hayan sido arregladas por la vía diplomática ó por arbitraje entre los dos Gobiernos, y que hubieren sido presentadas por el Departamento de Estado de los Estados Unidos ó por su Legación en Caracas á la Comisión abajo mencionada, serán examinadas y decididas por una Comisión Mixta, que celebrará sus sesiones en Caracas, y que se compondrá de dos miembros, uno de los cuales será nombrado por el Presidente de los Estados Unidos, y el otro por el Presidente de Venezuela.

It is agreed that an umpire may be named by the Queen of the Netherlands. If either of said commissioners or the umpire should fail or cease to act, his successor shall be appointed forthwith in the same manner as his predecessor. Said commissioners and umpire are to be appointed before the first day of May, 1903.

The commissioners and the umpire shall meet in the city of Caracas on the first day of June, 1903. The umpire shall preside over their deliberations, and shall be competent to decide any question on which the commissioners disagree. Before assuming the functions of their office the commissioners and the umpire shall take solemn oath carefully to examine and impartially decide, according to justice and the provisions of this convention, all claims submitted to them, and such oaths shall be entered on the record of their proceedings. The commissioners, or, in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature, or of the provisions of local legislation.

The decisions of the commission, and in the event of their disagreement, those of the umpire, shall be final and conclusive. They shall be in writing. All awards shall be made payable in United States gold, or its equivalent in silver.

Se conviene en que un tercero en discordia podrá ser nombrado por la Réina de los Países Bajos. Si uno de dichos comisionados ó el tercero en discordia dejare de ejercer sus funciones, será nombrado en el acto su sucesor del mismo modo que el antecesor de éste. Dichos comisionados y tercero en discordia deben ser nombrados antes del día primero de mayo de 1903.

Los comisionados y el tercero en discordia se reunirán en la ciudad de Caracas el día primero de junio de 1903. El tercero en discordia presidirá sus deliberaciones, y tendrá facultad para dirimir cualquier cuestión sobre la que no puedan avenirse los comisionados. Antes de empezar á ejercer las funciones de su cargo, los comisionados y el tercero en discordia prestarán solemne juramento de examinar con cuidado, y de decidir imparcialmente, con arreglo á la justicia y á las estipulaciones de esta convención, todas las reclamaciones que se les sometieren, y tales juramentos se asentarán en su libro de actas. Los comisionados, ó en caso de que éstos no puedan avenirse, el tercero en discordia decidirá todas las reclamaciones con arreglo absoluto á la equidad, sin reparar en objeciones técnicas, ni en las disposiciones de la legislación local.

Las decisiones de la comisión, y en caso de su desavenencia, las del tercero en discordia, serán definitivas y concluyentes. Se estenderán por escrito. Todas las cantidades falladas serán pagaderas en moneda de oro de los Estados Unidos ó en su equivalente en plata.

Article II.

The commissioners, or umpire, as the case may be, shall investigate and decide such claims upon such evidence or information only

Artículo II.

Los comisionados ó el tercero en discordia, según el caso, investigarán y decidirán tales reclamaciones con arreglo únicamente á

as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of or in answer to any claim, and to hear oral or written arguments made by the agent of each Government on every claim. In case of their failure to agree in opinion upon any individual claim, the umpire shall decide.

Every claim shall be formally presented to the commissioners within thirty days from the day of their first meeting, unless the commissioners or the umpire in any case extend the period for presenting the claim not exceeding three months longer. The commissioners shall be bound to examine and decide upon every claim within six months from the day of its first formal presentation, and in case of their disagreement, the umpire shall examine and decide within a corresponding period from the date of such disagreement.

las pruebas ó informes suministrados por los respectivos Gobiernos, ó en nombre de éstos. Tendrán obligación de recibir y considerar todos los documentos ó exposiciones escritas que les fueren presentadas por los respectivos Gobiernos, ó en su nombre, en apoyo ó en refutación de cualquiera reclamación, y de oir los argumentos orales ó escritos que hiciere el agente de cada Gobierno sobre cada reclamación. En caso de que dejen de avenirse sus opiniones sobre cualquiera reclamación, decidirá el tercero en discordia.

Cada reclamación se presentará formalmente á los comisionados dentro de treinta días contados desde la fecha de su primera reunión, á menos que los comisionados ó el tercero en discordia prorroguen, en algún caso, por un término que no exceda de tres meses, el período concedido para presentar la reclamación. Los comisionados tendrán obligación de examinar y decidir todas las reclamaciones dentro de seis meses contados desde el día en que hubieren sido formalmente presentadas por primera vez, y en caso de su desavenencia, examinará y decidirá el tercero en discordia dentro de un período correspondiente contado desde la fecha de tal desavenencia.

Article III.

The commissioners and the umpire shall keep an accurate record of their proceedings. For that purpose, each commissioner shall appoint a secretary versed in the language of both countries, to assist them in the transaction of the business of the commission. Except as herein stipulated, all questions of procedure shall be left to the determination of the commission, or in case of their disagreement, to the umpire.

Artículo III.

Los comisionados y el tercero en discordia llevarán un registro exacto de todas sus deliberaciones y acuerdos. Para ese objeto, cada comisionado nombrará un secretario versado en el idioma de cada país para que le ayude en el despacho de los negocios que pendieren ante la comisión. Salvo las estipulaciones del presente protocolo, toda cuestion de procedimiento se remitirá á la resolución de la comisión, ó en caso de su desavenencia, á la del tercero en discordia.

ARTICLE IV.

Reasonable compensation to the commissioners and to the umpire for their services and expenses, and the other expenses of said arbitration, are to be paid in equal moieties by the contracting parties.

ARTÍCULO IV.

Una retribución equitativa será pagada por las partes contratantes, en partes iguales, á los comisionados y al tercero en discordia por sus servicios y gastos, y también se satisfarán de la misma manera, los demás gastos del arbitraje.

ARTICLE V.

In order to pay the total amount of the claims to be adjudicated as aforesaid, and other claims of citizens or subjects of other nations, the Government of Venezuela shall set apart for this purpose, and alienate to no other purpose, beginning with the month of March, 1903, thirty per cent. in monthly payments of the customs revenues of La Guaira and Puerto Cabello, and the payments thus set aside shall be divided and distributed in conformity with the decision of the Hague Tribunal.

In case of the failure to carry out the above agreement, Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government in respect to the above claims shall have been discharged. The reference of the question above stated to the Hague Tribunal will be the subject of a separate protocol.

ARTÍCULO V.

Con el fin de pagar el importe total de las reclamaciones que se hayan de decidir de la manera que queda dicha, y otras reclamaciones de ciudadanos ó súbditos de otros Estados, el Gobierno de Venezuela reservará, y no enajenará para ningún otro objeto (empezando desde el mes de marzo de 1903) un treinta por ciento, en pagos mensuales, de las rentas aduanales de la Guaira y Puerto Cabello, y el dinero así reservado será distribuido con arreglo al fallo del Tribunal de la Haya.

En caso de que no se cumpla el susodicho convenio, empleados belgas quedarán encargados del cobro de los derechos de aduana de ambos puertos, y los administrarán hasta que se hayan cumplido las obligaciones del Gobierno de Venezuela respecto de las referidas reclamaciones. La remisión al Tribunal de la Haya de la cuestión arriba expuesta será objeto de un protocolo separado.

ARTICLE VI.

All existing and unsatisfied awards in favor of citizens of the United States shall be promptly paid, according to the terms of the respective awards.

ARTÍCULO VI.

Todas las sumas falladas á favor de ciudadanos de los Estados Unidos, que no se hayan satisfecho, serán pagadas con puntualidad, conforme á las disposiciones de los respectivos fallos.

Washington, D. C. February 17, 1903.

JOHN HAY [SEAL]

HERBERT W. BOWEN. [SEAL]

PERSONNEL OF AMERICAN-VENEZUELAN COMMISSION.

Umpire.—Charles Augustinus Henri Barge, of Holland.
American Commissioner.—William E. Bainbridge, of Council Bluffs, Iowa.
Venezuelan Commissioner.—José de J. Paúl. (Resigned October 16, 1903.)
Carlos F. Grisanti. (Appointed October 16, 1903.)
American Agent.—Robert C. Morris, of New York.
Assistant American Agent.—W. T. Sherman Doyle, of Washington, D. C.
Venezuelan Agent.—F. Arroyo-Parejo.
American Secretary.—Rudolf Dolge, of Caracas.
Venezuelan Secretary.—J. Padrón-Ustáriz. (Resigned October 16, 1903.)
Eduardo Calcaño-Sanavria. (Appointed October 16, 1903.)

RULES OF AMERICAN-VENEZUELAN COMMISSION.

I.

The secretaries shall keep a docket and enter thereon a list of all claims as soon as they shall be formally filed with the Commission. They shall endorse the date of filing upon each paper presented to the Commission, and enter a minute thereof in the docket. The claims shall be numbered consecutively, beginning with the claim first presented as No. 1.

The caption of each case shall be:

THE UNITED STATES OF AMERICA,
on behalf of ——— ———, claimant,
v.
THE REPUBLIC OF VENEZUELA. } No. ——.

The secretaries shall keep duplicate records of the proceedings had before the Commission, and of the docket of claims filed with the Commission, both in English and Spanish, so that one copy of each shall be supplied to each Government.

II.

All claims must be formally presented to the Commission within thirty days from the 1st day of June, 1903, unless the commissioners or the umpire grant a further extension in accordance with the provisions of paragraph 2, Article II, of the protocol.

III.

A claim shall be deemed to be formally filed with the Commission upon the presentation of the written documents or statements in connection therewith to the secretaries of the Commission by the agent of the United States.

IV.

The Government of the United States by its agent shall have the right to file with each claim at the time of presentation a brief in support thereof.

It shall not be necessary for the Republic of Venezuela in any case to deny the allegations of the claim or the validity thereof; but a general denial shall be entered of record by the secretaries, as of course, and thereby all the material allegations of the petition shall be considered as put in issue.

The Republic of Venezuela, however, by its agent shall have the right to make specific answer to each claim within fifteen days after the date of filing thereof, and if it elects to answer, at or before the time of making said answer by its agent, present to the Commission all evidence which it intends to produce in opposition to the claim. The Government of the United States shall have the right to present evidence in rebuttal within the period in this rule provided for the filing of a replication.

The filing of a brief on behalf of the claimant Government and the filing of a brief on behalf of the respondent Government, or the failure to specifically answer any claim within the time allowed, as above provided, shall be deemed to close the proceedings before the Commission in regard to the claim in question, unless the agent of the United States, within two days of the filing of a brief by the respondent Government shall formally request the Commission in writing a further period of five days in which to file a replication; in which event the Republic of Venezuela shall, upon the like request of its agent, have a like period within which to put in a rejoinder, which replication and rejoinder shall finally close the proceedings.

V.

The petition or answer may be amended at any time before the final submission of any claim as provided in the preceding rules upon leave granted by the Commission.

VI.

No documents or statements or written or oral argument will be received except such as shall be furnished by or through the agents of the respective Governments.

VII.

The secretaries shall each keep a record of the proceedings of the Commission for each day of its session in both English and Spanish in books provided for the purpose, which shall be read at its next meeting, and if no objection be made, or when corrected, if correction be needed, shall be approved and subscribed by the umpire and commissioners and counter subscribed by the secretaries.

They shall keep a notice book in which entries may be made by the agent for either Government, and when made shall be notice to the opposing agent and all concerned.

They shall provide duplicate books of printed forms under the direction of the Commission in which shall be recorded its several awards

or decisions signed by the commissioners or, in the case of their disagreement, by the umpire, and verified by the secretaries.

They shall be the custodians of the papers, documents, and books of the Commission under its direction, and shall keep the same safe and in methodical order. While affording every reasonable opportunity and facility to the agents of the respective Governments to inspect and make extracts from papers and records, they shall permit none to be withdrawn from the files of the Commission, except by its direction duly entered of record.

VIII.

When an original paper on file in the archives of either Government can not be conveniently withdrawn, a duly certified copy may be received in evidence in lieu thereof.

OPINIONS IN THE AMERICAN-VENEZUELAN COMMISSION.

Dix Case.

The acts of a revolution becoming successful are to be regarded as the acts of a de facto government.

Taking of neutral property for the use or service of successful revolutionary armies by functionaries thereunto authorized gives a right to the owner to demand compensation from the government exercising such authority.

Governments, like individuals, are responsible only for the proximate and natural consequences of their acts.

Bainbridge, *Commissioner* (for the Commission):

The facts upon which this claim is based are substantially as follows:

In September, 1899, at the beginning of the revolution led by General Castro against the Government of President Andrade, Ford Dix, a native-born citizen of the United States, was engaged in the cattle business in Venezuela, having leased pastures near Valencia and Miranda, upon which he alleges he had at the time mentioned about 800 head of beef, 21 milch cows, 16 yearling calves, 6 saddle horses, and 1 mule. Dix claims that he had, on July 3, previous, entered into a contract with the firm of Salmon & Woodrow, of Havana, Cuba, by which he agreed to deliver said firm between September 15 and October 7, 1899, 750 to 800 head of cattle to weigh 750 to 900 pounds each, for which said firm was to pay him $50 per head.

On September 15, a battle occurred at Tocuyito, between the Government forces and the revolutionists, in which the Government army was completely routed. The revolutionary army remained in that section of the country for several months, and at various times between September 15 and December 31, 1899, Dix's cattle were confiscated for the use of the army. Dix alleges that they took from him 409 beeves, 16 milch cows, 16 calves, 4 saddle horses, and 1 mule; that to avoid losing the remaining 388 head he sold them to Braschi & Sons, of Valencia, at a sacrifice, viz, $19 per head Venezuelan; that by reason of the above, and to the fact that there was no communication with the seacoast, he was prevented from complying with his contract with Salmon & Woodrow, and was obliged to pay said firm $1,875 damages on account of his failure to deliver the cattle as required by the terms of said contract. Dix succeeded in obtaining from the revolutionary

authorities evidence of the taking of 252 head of cattle, and subsequently, upon personal request of Dix to be paid for his cattle, General Castro, after assuming the office of President, caused to be issued to Dix a Government warrant for the value of 102 head.

No documentary evidence is submitted in support of the claimant's allegation of the taking of the other 55 beeves, 16 cows, 16 calves, 3 horses, and 1 mule. The taking of 1 horse is proven by an original telegram signed by General Castro.

Mr. Dix also makes a claim for expenses which the above circumstances caused him to incur in traveling expenses, railroad fares, hotel bills, etc.

As submitted to this Commission the claim of Mr. Dix may be summarized as follows:

		Venezuelan.
Loss of 354 head of beef cattle, at $30		$10,620.00
Loss of 388 head of beef cattle, at $11, difference between price obtained by Dix and value stated in vouchers given		4,268.00
Loss of 55 head of beef cattle for which no vouchers were obtained, at $30 per head		1,650.00
Other cattle and ranch animals as follows:		
1 saddle horse	$150.00	
1 saddle horse	100.00	
1 saddle horse	200.00	
1 saddle mare	50.00	
1 saddle mule	250.00	
16 milch cows, at $35 per head	560.00	
16 calves, at $10 per head	160.00	
		1,470.00
Amount paid for nonfulfillment of contract with Salmon & Woodrow		2,437.50
Expenses		1,000.00
Total		21,445.50

The revolution of 1899, led by General Cipriano Castro, proved successful, and its acts, under a well-established rule of international law, are to be regarded as the acts of a de facto government. Its administrative and military officers were engaged in carrying out the policy of that Government under the control of its executive. The same liability attaches for encroachments upon the rights of neutrals in the case of a successful revolutionary government, as in the case of any other de facto government. What that liability is has been clearly stated in the case of Shrigley *v.* Chile, decided by the United States and Chilean Claims Commission of 1892, as follows:

> Neutral property taken for the use or service of armies or functionaries thereunto authorized gives a right to the owner to demand compensation from the government exercising such authority.[a]

In the case before us, so far as the 354 head of cattle are concerned, the taking of which by the revolutionary army is in various forms evidenced, the liability of Venezuela to compensate Mr. Dix is determined by the rule above quoted. And this liability may fairly be extended to include compensation for the other stock, either taken by the revolutionary troops or lost as the direct result of the depredations of the army in the stampeding of the herd, the destruction of fences, etc. That Dix's cattle were taken under authorization of the military officers is proved by the receipts given by Generals Lovera, Martinez, and Lima, and the Government warrant given by President Castro. Dix states that General Hernandez told him that he would exempt his

[a] Moore's Arbitrations, 3712.

cattle as far as possible, but that "he did not propose to face defeat for the want of something to eat for his troops."

The value of the cattle taken, as stated in the receipts and the Government warrant given by General Castro, is $30 (Venezuelan) per head. As to the cattle for which Dix could not obtain receipts, but whose loss he established by other documentary evidence, their value is stated by Dix and other witnesses as "at not less than 120 bolivars per head in this market" ($30 Venezuelan). The value of the 409 beeves taken from or lost by Dix was, therefore, $12,270 (Venezuelan). To this must be added the value of the mule, saddle horses, cows, and calves, also taken from him, amounting to $1,470 (Venezuelan). Thus the total value of Mr. Dix's stock, confiscated or lost, amounted to $13,740 (Venezuelan).

On December 18, 1899, Mr. Dix sold and delivered at Los Guayos to the firm of A. Braschi & Sons 388 beeves at $19 (Venezuelan money) per head. He says: "I made a sale—that is, I sacrificed them to save something." He makes a claim against the Venezuelan Government for $4,268, the difference between the sum received by him from Braschi & Sons, and the alleged actual value of the cattle (to wit, $30 per head) which he sold to them.

Governments like individuals are responsible only for the proximate and natural consequences of their acts. International as well as municipal law denies compensation for remote consequences, in the absence of evidence of deliberate intention to injure. In my judgment the loss complained of in this item of Dix's claim is too remote to entitle him to compensation. The military authorities, under the exigencies of war, took part of his cattle, and he is justly entitled to compensation for their actual value. But there is in the record no evidence of any duress or constraint on the part of the military authorities to compel him to sell his remaining cattle to third parties at an inadequate price. Neither is there any special animus shown against Mr. Dix, nor any deliberate intention to injure him because of his nationality. He refers himself to the estimation in which he was held by General Castro. If the disturbed state of the country impelled Mr. Dix to sacrifice his property, he thereby suffered only one of those losses due to the existence of war for which there is, unfortunately, no redress.

Upon similar grounds the claim of Mr. Dix to be reimbursed by the Venezuelan Government for the amount alleged to have been paid by him to the Havana firm as damages for the nonfulfillment of his contract must be disallowed. Interruption of the ordinary course of business is an invariable and inevitable result of a state of war. But incidental losses incurred by individuals, whether citizens or aliens, by reason of such interruption are too remote and consequential for compensation by the Government within whose territory the war exists.

Moreover it is very probable that Mr. Dix could not have complied with his contract, even had the revolutionists left him in undisturbed possession of his cattle, for the reason that the port of Puerto Cabello was closed for several weeks. Dix says: "I realize, and realized, that had I had undisturbed possession of my cattle I could not have shipped them within the allotted time on account of the revolution." Had Mr. Dix been able to complete his contract he would have made a large profit; instead, he appears to have suffered a loss. "I would not have gone to that country," he says, "to encounter the known difficulties, not to mention the unknown, for just a reasonable profit. I went

after the fancy profits which I ascertained were to be made." He must, however, be held to have been willing to accept the risks as well as the advantages of his domicile in a country in a state of civil war.

These principles also dispose of Mr. Dix's claim for expenses. It is doubtless true that he was subjected to considerable inconvenience and expense; but his rights and immunities in that regard are not different from those of other inhabitants of the country, and

no government compensates its subjects for losses or injuries suffered in the course of civil commotions. (Hall, 4th edition, p. 232.)

In view of the foregoing an allowance is made in this claim in the sum of $13,740 (Venezuelan), with interest at 3 per cent per annum from January 1, 1900, to December 31, 1903, the latter being the anticipated date of the final award by this Commission. The total sum allowed is, therefore, $15,388.80 (Venezuelan), equivalent to the sum of $11,837.53 in gold coin of the United States.

NOTE.—Wherever in this opinion the words "Venezuelan dollars" are used the meaning thereof is "Venezuelan pesos" of the value of 4 bolivars each. (W. E. B.)

DE GARMENDÍA CASE.

Damages awarded for the destruction of property for the public benefit by order of the legitimate authorities.

Interest can not justly be charged against the Government except from the date of the demand for compensation, unless the delay in presenting the claim is satisfactorily explained. [a]

BAINBRIDGE, *Commissioner* (for the Commission):

The United States of America on behalf of Corinne B. de Garmendía, as sole legatee under the will of Carlos G. de Garmendía, deceased, presents a claim against the Government of Venezuela for the sum of $111,274.63, said claim being based upon the following statement of facts:

First. That on July 7, 1877, Carlos G. de Garmendía, a naturalized citizen of the United States, made with the Government of Venezuela, through its minister of the interior, a contract to establish steam-vessel communication between New York City and the ports of La Guaira and Puerto Cabello, the Government of Venezuela, in consideration of the advantages to accrue to the entire country from such communication, binding itself to aid the enterprise with a monthly subsidy of $4,000 (Venezuelan). The contract was to "remain in full force and power for the term of two years."

The enterprise commenced operations December 15, 1877, and from that date the Government of Venezuela paid punctually the monthly subsidy of $4,000 (Venezuelan) until January 15, 1879. In March, 1879, the Government gave notice to de Garmendía's agents that it would no longer continue paying the subsidy, there being then due and unpaid one-half the monthly subsidy for January and the whole of that for February. De Garmendía continued the steamship service until May, 1879, at which time it was discontinued on account of the nonpayment of the subsidy. For this breach of contract a claim is made for the unpaid subsidy from January 15 to December 15, 1879, in the sum of $44,000 (Venezuelan), with interest at 3 per cent per annum.

---

[a] On subject of interest see Cervetti case, p. 658, and Christern case, p. 584.

Second. That in 1874 one H. de Garmendía made a contract with the Government of Venezuela to establish a permanent factory for the manufacture of ice in the city of Caracas, with branches at La Guaira and Puerto Cabello. In order to establish the depot, a frame house, with all the machinery and requirements of the enterprise, was imported from the United States into Venezuela. In 1879, on account of the stoppage of the payment of the subsidy to the steamship line operated by Carlos G. de Garmendía, and the consequent discontinuance of the steamers, the ice enterprise could no longer be carried on, and in payment of advances made by Carlos G. de Garmendía, the house and ice plant were conveyed to him by the said H. de Garmendía. In April, 1879, General Guzmán Blanco ordered the destruction of the house containing the ice plant. That said house had been imported and placed in La Guaira at a cost of $10,000 (Venezuelan), and was at that time rented for the sum of $150 (Venezuelan) per month. A claim is made for $10,000 (Venezuelan) the value of the house, with legal interest from the date of its destruction, and also for the deprivation of the rent.

In the month of December, 1889, de Garmendía presented his claim to the Venezuelan Government and urged its payment. It is insisted before this Commission that de Garmendía's claim was recognized and acknowledged by the Government of Venezuela in the following record in the ministry of the treasury:

[Translation.]

COMMITTEE OF EXAMINING ACKNOWLEDGMENT OF DEBTS,
Caracas, February 27, 1890.

The claim of Mr. Carlos G. de Garmendía, amounting to 431,500 bolivars, having been examined by this committee, the President of the Republic orders that 40,000 bolivars be paid on account; let the corresponding order for payment be taken to the Sala de Centralización. The word "Perforate" follows, altered to the words "pay it," without being removed; and file this record.

The President, JOSÉ M. LARES.

The above-named sum of 40,000 bolivars was paid to de Garmendía, in acknowledgment of which he gave the following receipt:

CARACAS, *February 26, 1891.*

I have received from the Government of the United States of Venezuela the sum of 40,000 bolivars, as follows:

Four thousand bolivars in money and 36,000 bolivars in titles of 1 per cent monthly, on account of two claims I have presented, and which have been accepted and recognized in this form:

	Venezuelan.
Value of ice plant in La Guaira destroyed and material thrown away in April, 1879	$10,000
Interest to date for 10 years and 10 months, at 3 per cent annual	3,708
For the rent of ten years, at $1,800	18,000
Subsidy on the balance of contract for steamers between New York and Venezuela, 11 months, at $4,000	44,000
Interest at 3 per cent per year for 11 years and 1 month	15,059
Total	90,767

Received on account $10,000 described as above.

CARLOS G. DE GARMENDÍA.

Between the lines the word "been."
Correct.

C. G. DE G.

The meaning and effect of the record above quoted are open to some doubt. Under date of July 3, 1891, de Garmendía made a request of the ministry of the treasury for a certified copy of this record. Whereupon the director of finance of the department of hacienda, in compliance with the foregoing, states that the record to which the preceding representation of Señor Carlos G. de Garmendía refers, is to the following effect:

Carlos G. de Garmendía claims 431,500 bolivars as principal and interest for damages suffered under the contract which he had with the Government for a steamship line and an ice plant. As Señor Garmendía does not verify this claim except upon his statement the junta believe the claim inadmissible. Continuing, there is a note which appears to be in the writing of Dr. Juan S. Rojas Paúl, which states as follows: "Let there be paid on account of this claim $10,000 in notes."

On the other hand, in a letter to de Garmendía, dated August 21, 1893, José M. Lares, who signed the record in question as president of the board of inquiry, and recognition of debts, says in explanation of the wording of said instrument:

> In perforating or canceling the accounts that were paid that word was undoubtedly put upon yours without noticing that it had not been paid in full, but that part of the amount of your claim was carried on *account*, which indicates clearly that your claim was acknowledged by the President and that it still remained pending but for the balance.

For reasons hereinafter made apparent, the Commission is not disposed to determine the claim upon any technical construction of this disputed acknowledgment. Upon its merits, the claim is clear enough. The subsidy contract was executed on the part of Venezuela by Dr. Laureano Villanueva, who is described in the instrument as "minister of state in the home office (of the Federal Executive of the United States of Venezuela) fully authorized by the national Executive."

Article 9 of the contract provides as follows:

> The Government of Venezuela in consideration of the advantages which the official service and the entire country will have from this way of communication, binds itself to aid the enterprise with a monthly subsidy of 4,000 Venezolanos which will be handed in Caracas to Messrs. Nevett & Co., the consignee of the steamers.

The steamship enterprise commenced operations on the 15th day of December, 1877. The Government of Venezuela paid the monthly subsidy until January 15, 1879. It then stopped payments and in March following notified the agents of de Garmendía, Messrs. Nevett & Co., that it would pay them no longer.

Article II provides: "This contract will be in full force for the period of two years."

The contract was executed July 7, 1877. It expired by limitation, therefore, on July 7, 1879. From January 15, 1879, the contract had five months and twenty-two days to run. Its breach entitled de Garmendía to the amount of the subsidy for this unexpired term.

> In every case of breach of contract the plaintiff's loss is measured by the benefit to him of having the contract performed; and this is therefore the measure of his damages. (Sedgwick on Damages, sec. 609.)
>
> The amount which would have been received if the contract had been kept, is the measure of damages if the contract is broken. (Alder *v.* Keighley, 15 M. and W., 117.)

On January 9, 1880, Messrs. Hellmund & Co., the agents of Mr. de Garmendía at La Guaira, were served with the following notice:

[Translation.]

CARACAS, *January 9, 1880.*

Messrs. G. HELLMUND & Co., *La Guaira.*

Under date of yesterday the citizen minister of hacienda says to this office what follows: "The illustrious American having been informed that the frame house used as an ice depot in the port of La Guaira greatly prevents the employees of the custom-house from duly watching that port, he has thought it indispensable to destroy it, in order to leave that place open; and he has ordered me to address myself to you to please indicate the means conducive to the fulfilling of the indicated proposal, advice which I have the honor of participating to you as the guardians of said house, that you may order its evacuation as soon as possible, and to inform this office what day this will be carried out."

P. ARNAL.

The ice house was, therefore, not destroyed until sometime in January, 1880, and its destruction was deemed necessary as an act of public utility. De Garmendía was entitled to compensation for the actual value of the property and interest thereon for the time payment was wrongfully delayed. But he was clearly not entitled also to the rent which forms so large an item of his claim, and which is included in the amount alleged to have been acknowledged. After the destruction of the ice house by the Venzuelan authorities, de Garmendía could have no claim for being kept out of the use of the property, but only one for the equivalent value of the property in money and interest thereon for the time he was without fault of his own kept out of the use of that sum. (Sedgwick on Damages, sec. 316.)

As indicated above, this claim originated in the years 1879 and 1880. Mr. de Garmendía, however, made no demand upon the Venezuelan Government for its adjustment until the month of December, 1889. Can Venezuela be justly charged with interest during this long interval? I think not. The delay in presenting the claim is not satisfactorily explained, and the Government was not in default until it at least had proper notice that Mr. de Garmendía was asserting his right to compensation.

The following payments have been made upon this claim: On February 6, 1891, the sum of $10,000, as evidenced by Mr. de Garmendía's receipt of that date; on or about May 9, 1896, the sum of $1,000; and on or about January 15, 1898, the sum of $1,600 gold, the last two payments having been made to the claimant herein, as evidenced by her letter to Senator McComas.

In view of the foregoing, allowance will be made: (1) For the unpaid balance of subsidy, the sum of $22,933.31 (Venezuelan).

(2) For the ice house at La Guaira the sum of $10,000 (Venezuelan).

The principal sum of $32,923.31 (Venezuelan) will bear interest at the rate of 3 per cent per annum from December 2, 1889, deducting the amounts paid. On this basis the balance due on December 31, 1903, the anticipated date of the final award by this Commission, is the sum of $30,538.19 (Venezuelan), equivalent to the sum of $29,363.64 in gold coin of the United States.

HENY CASE.

(By the Umpire:)

The deficiency of an instrument for want of recording so as to make it invalid as against third parties cannot be invoked by a trespasser or tort feasor to nullify it, and damages will be allowed a party whose interest is evidenced by such an instrument.

Damages will not be allowed for the interruption of the ordinary course of business in the territory where war exists, since it is an inevitable result of a state of war.[a]

BAINBRIDGE, *Commissioner* (claim referred to umpire):

Emerich Heny, the claimant herein, was born in Germany in 1846 and emigrated to the United States in 1867, where he was naturalized as a citizen thereof in the superior court of the city of New York on October 15, 1872. Two years later he removed to Venezuela where he has since resided. In 1883 he was married to Bertha Benitz, of Caracas, one of the children and heirs of Carlos Benitz, deceased. The Benitz heirs were the owners of an estate situated at Las Tejerías, near Caracas, said estate being known as "La Fundación." Upon his marriage Heny undertook the management and cultivation of the estate, and he also rented an adjoining plantation known as "El Palmar," which he cultivated on his own account.

In the months of September and October, 1892, a revolution called the "Legalista" was in progress in Venezuela, which ultimately proved successful, resulting in the overthrow of the then existing government. During this revolution the contending forces passed over "La Fundación" and destroyed the crops, seized the horses, cattle, and other property, and exacting from the owners of the estate loans of money and supplies for the troops, inflicting a loss, as claimed, aggregating 143,098 bolivars, equivalent to $27,617.91 in United States gold.

On March 7, 1893, Gen. Antonio Fernandez, who was "chief of the army of the center during the 'Legalista' revolution," signed a document setting forth "the pro rata supplies furnished the army of the revolution by the plantation called 'La Fundación,' situated at Las Tejerías, the property of the heirs of Señor C. Benitz whose general agent and representive is Señor E. Heny," enumerating said supplies and giving the total value thereof as 143,098 bolivars.

On March 15, 1893, Mr. Heny addressed to the minister of the treasury and public credit the following communication:

E. Heny, a merchant and resident of this city as representative and authorized agent of the heirs of Señor C. Benitz respectfully represents to you:

The said heirs are creditors of the Government for the sum of 143,098 bolivars for supplies furnished to the revolution in the district of Ricaurte, State of Miranda, and as shown by the annexed proofs on stamped paper certified by Gen. Antonio Fernandez, which I present to you by virtue of the Executive resolution of November 25th, last.

Caracas, March 15, 1893.

E. HENY.

An offer was made by the Government to pay 40 per cent of the amount of the claim in the form of a special revolutionary note issue which, it is alleged, was worth only 15 per cent of its par value; so that the offer was in effect to pay 6 per cent of the amount claimed: The offer was rejected and the claim was withdrawn from the ministry of the treasury and public credit.

---

[a] See Dix case, p. 9.

During the months of November and December, 1899, another revolution was going on in Venezuela, in which the military forces, both of the Government and the revolutionists, passed over "La Fundación," and cut down and seized for forage a large quantity of growing sugar cane. A battle occurred in the vicinity on November 29, 1899, and the sugar cane was in part destroyed by the passage and repassage of the troops. The total value of the sugar cane taken or destroyed in this manner and at this time was the sum of 12,000 bolivars.

The United States of America on behalf of Emerich Heny now presents to this Commission a claim, inclusive of the two claims designated above, amounting in the aggregate with interest to $38,714.30.

Article 1 of the protocol constituting the Commission confers jurisdiction over—

"all claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the Commission hereinafter named by the Department of State of the United States or its legation at Caracas.

It is evident from the record that Heny never became the real owner of "La Fundación." Subsequent to his marriage he assumed the management of the estate and became in all matters pertaining to it the general agent and representative of the Benitz heirs. It seems at that time the plantation was run down and out of repair. Heny says:

Upon my marriage I entered into a contract with the said heirs by which I undertook the management and cultivation of the said plantation on my own account and with my individual capital. From that time until 1892, when the events hereinafter related occurred, I invested, in addition to my labor and services, the sum of $12,606.80 of my own money in improving and developing said plantation.

An instrument is put in evidence bearing date May 1, 1892, which reads as follows (translation):

We, Emilia B. de Benitz, a widow; Matilda Benitz, Adolf Benitz, Emilia Benitz, Gustavo Benitz, unmarried, residing in this city, of more than 21 years of age, and sole heirs—conjointly with Bertha Benitz de Heny, wife of E. Heny—of Mr. Carlos Benitz, declare that, owing as we do Mr. E. Heny the sum of 12,606 pesos sencillos and 80 centesimals, besides other sums that we owe to sundry other creditors of our estate "La Fundación," to the amount of 26,833 pesos and 33 centesimals, for money supplied by said Heny for the improvement, maintenance, and cultivation of our sugar-cane estate called "La Fundación," situate at Las Tejerías jurisdiction, of the municipality of Consejo, district of Ricaurte, of the State of Miranda, the boundaries of which are in conformity with the title of property which, as heirs to our principal, Mr. Carlos Benitz, is in our possession and is registered under Nos. 38 and 41 of the first and second protocols, of the first quarter, under date of March 11, 1878, we hereby assign, cede, and transfer, in favor of the said Mr. E. Heny, all of the rights and actions that correspond to us or may to us correspond in future in said property "La Fundación," as a guarantee to said Heny for any loss he may sustain in the capital he has invested in said estate, Heny remaining bound to answer for the other debts incurred by said estate, which he is to pay off when we make, as we now make, formal cession in his favor of our credits in said estate. To the accomplishment of what is herein agreed to we bind our present and future property, in accordance with the law.

I, E. Heny, of over 21 years of age, wedded to Bertha Benitz, residing in this city, do accept the above transfer and bind myself to carry out my share of this agreement.

Caracas, May 1, 1892.

EMILIA B. DE BENITZ.
MATILDA BENITZ.
ADOLF BENITZ.
EMILIA BENITZ.
GUSTAVO BENITZ.
E. HENY.

This contract between the Benitz heirs and Heny is neither a mortgage nor a sale of the estate. Somewhat deficient in form, the contract is in substance that known to the civil law as an antichresis, whereby a creditor acquires the posession and right of reaping the fruits and other revenues of real property given him in pledge as security for a debt. The creditor does not become the proprietor of the immovables pledged, but he may take the profits of the estate, crediting annually the same to the interest and the surplus to the principal of the debt, and being bound to keep the estate in repair and pay the taxes. It is analogous to the vadium vivum of the early English law and the Welsh mortgage, which has now gone entirely out of use in common-law countries. Under the civil law the antichresis gives the creditor, not the title to but a possessory interest in, the real property pledged. (4 Kent's Com., 138n; Livingston *v.* Story, 11 Pet., 351; Walton's Civil Law in Spanish-America, art. 1881.)

A pledge or pawn (Pfandrecht) in the modern Roman law, according to Bar's definition, is a real, or possessory, right to follow a thing in the hands of third parties for the satisfaction of a personal claim. * * *

A whole estate may be thus pledged and in such cases the pledge covers not only what is on the estate at the time, but what may afterwards be added to it, even though the parties at the time have no knowledge of such addition. (Wharton, Conflict of Laws, sec. 314, citing Savigny, VIII, sec. 366.)

By the common Roman law a person can hypothecate his entire estate as an aggregate—i. e., all things which he has in bonis at the particular time and those he will possess in future. (Ibid., sec. 320.)

We have here the measure and extent of Heny's individual interest. Up to May 1, 1892, he had advanced the Benitz heirs out of his own capital the sum of 12,606.80 pesos. Clearly the purpose and intent of this contract was to secure Heny for the advances made and to be made by him on account of the estate. To provide this security, the heirs of Carlos Benitz pledged to Heny the estate of La Fundación and its appurtenances. Thereafter Mr. Heny, though not the holder of the legal title to the estate, did have a real or possessory right therein, which entitled him to compensation against third parties who, by their wrongful acts, might impair his security, to the extent at least of his actual interest in the property.

Anyone having an interest in land is liable to suffer injury with respect to this right; and accordingly, if his right, however limited it be, is injured, he may recover compensation equal to his individual loss. The general rule may be said to be that the extent of the injury to the plaintiff's proprietary right, whatever it may be, furnishes the measure of damages. (Sedgwick on Damages, sec. 69.)

In the contract with the heirs, Mr. Heny agreed to pay the other debts of the estate; but there is in the record no allegation or proof that he did so. They can not be considered, therefore, as included in the advances made by Heny to the estate.

General Fernandez certifies that the pro rata supplies furnished to his army by the plantation called "La Fundación," amounted to 143,098 bolivars. These supplies consisted of crops, horses, cattle, lumber, merchandise, tools, and money. All of this property as appurtenances of the estate was in Heny's possession under the contract with the Benitz heirs, constituting part of his security for the 12,606.80 pesos invested by him in the property. It represented the "fruits and other revenues" of the estate which he had the right to apply to the satisfaction of his claim. The property taken or destroyed

exceeded in value the amount of his lien. If the Government of Venezuela is liable for the taking and destruction of this property, Mr. Heny is entitled to an award for an amount equal to his individual loss. To this should be added, as involved in the claim, compensation for the proportionate loss sustained by his wife, Bertha Benitz Heny, one of the Benitz heirs, who is by virtue of her marriage a citizen of the United States.

The "Legalista" revolution of September, 1892, ultimately proved successful in establishing itself as the de facto Government of Venezuela. The same liability attaches for encroachment upon the rights of neutrals in the case of a successful revolutionary government, as in the case of any other de facto government.

> The validity of its acts, both against the parent State and its citizens or subjects, depends entirely upon its ultimate success. If it fail to establish itself permanently, all such acts perish with it. If it succeed and become recognized, its acts from the commencement of its existence are upheld as those of an independent nation. (Williams *v.* Bruffy, 96 U. S., 176.)

The liability of a government for encroachment upon neutral property has been clearly stated in Shrigley *v.* Chile decided by the United States and Chilean Commission of 1892, as follows:

> Neutral property taken for the use or services of armies or functionaries thereunto authorized gives a right to the owner to demand compensation from the government exercising such authority.[a]

This rule has been followed in the case of Ford Dix decided by this Commission.[b]

The certificate of General Fernandez is sufficient evidence that the property taken from "La Fundación" was under the authorization of the military authorities for the use and services of the revolutionary army.

The learned counsel for Venezuela urges that the contract between Heny and the Benitz heirs is void because it consisted in the transfer of rights to real property for which record in the registry is an indispensable requisite in Venezuela. (Civil Code, art. 1888.) But this position is believed to be untenable. Certainly the contract was valid as between the parties, whether recorded or not. And whatever may be the requirement and effect of a registration law as affecting the rights of innocent third parties, it can have no possible bearing to excuse the acts of a mere trespasser or tort feasor.

The foregoing renders unnecessary any discussion of the second claim. But it may be remarked that the evidence shows that at the time of its destruction the property lay in the track of actual war.

An award should be made in this case for the sum of $10,085.40 (being the equivalent of 12,606.80 pesos) and the further sum of $1,753.25 (the proportionate loss sustained by Bertha Benitz Heny) in all the sum of $11,838.65 in United States gold, with interest thereon at 3 per cent per annum from March 15, 1893, the date of the presentation of the claim to the Venezuelan Government to December 31, 1903, the anticipated date of the final award by this Commission.

In so far as any claim or claims of the heirs of Carlos Benitz other than Bertha Benitz Heny are involved herein, they should be dismissed for want of jurisdiction, without prejudice to their prosecution in a proper forum.

---

[a] Moore's Arbitrations, 3712. [b] Page 7.

PAÚL, *Commissioner* (claim referred to umpire):

The United States of America, on behalf of Emerich Heny, presents to this Commission a claim for the sum of $38,714.30, interest inclusive.

E. Heny, claimant, was born in Germany in 1846, emigrated to the United States in 1867, was naturalized as an American citizen in 1872, and two years later moved to Venezuela, where he has since resided. In 1883 he married in Caracas Miss Bertha Benitz, daughter and heir of Carlos Benitz, then deceased. The heirs of the later acquired by inheritance from their father a rural property situated in "Las Tejerías," and called "La Fundación." After his marriage Heny became the manager of this estate.

The claim is based upon the following grounds:

First. During the months of September and October, 1892, the so-called "Legalista" revolution, which afterwards became the regular government, destroyed the plantations of the estate of "La Fundación," confiscated horses, cattle, and other valuable property, and obtained sums of money as loans, the total of these items amounting, as it is affirmed, to the sum of 143,098 bolivars. General Antonio Fernandez, on March 7, 1893, signed a document, in his character of "chief of the army of the center during the 'Legalista' revolution," declaring that "the total sum of the advances made to the revolutionary army by the estate called 'La Fundación,' property of Mr. Benitz's heirs and managed by Mr. E. Heny, amounted to the sum of 143,098 bolivars." This document appears to be legally executed by its signer.

Second. During the months of November and December, 1899, forces of the "Revolución Restauradora," then already constituted as government, passed and repassed over the estate "La Fundación," cutting large quantites of sugar cane under cultivation for forage, a battle actually taking place upon the property causing damages to the said plantation. The amount claimed on this account is 12,000 bolivars.

Third. The honorable agent for the United States presents as proof that his claim belongs to the American citizen, Mr. E. Heny, a private document executed by the widow and children of Carlos Benitz, his heirs, dated in Caracas on May 1, 1892, in which it appears that there being due to Mr. E. Heny the sum of 12,606.80 pesos venezolanos, and to other creditors of the same estate "La Fundación," the sum of $26,833, for advances made by said Heny for the improvement, maintenance, and cultivation of the said plantation, they assigned and transferred to E. Heny all rights and interests that correspond or might thereafter correspond to them in the said estate "La Fundación" as a guaranty against any loss that Heny might sustain of the capital invested by him in the estate; Heny being also bound to respond for all other claims against the estate, which he undertook to pay in consideration of the transfer made to him of all the rights and interests in the said property.

Fourth. E. Heny addressed on March 15, 1893, the minister of finance and public credit, as follows:

E. Heny, merchant and resident of this city, on behalf and as representative of the heirs of Mr. C. Benitz, beg to state respectfully that said heirs are creditors of the Government for the sum of 143,098 bolivars for advances made to the revolution in the district Ricaurte, State of Miranda, as is proven by the annexed voucher consisting of 1 folio, signed by Gen. Antonio Fernandez, which I present to you in accordance with the Executive resolution of 28th of November last.

When this claim was presented to the board of public credit it was admitted in favor of Benitz heirs for one-half of the total amount claimed, and the Government offered in payment bonds of "Deuda de la Revolución," which the claimants declined to accept for reason of its depreciated price in the market. Subsequently E. Heny addresed the Department of State at Washington on May 9, 1901, presenting in his own name and for his account two claims which had arisen as the results of the acts committed by the revolutionary forces in the estate "La Fundación" in 1892 and 1899, and other damages suffered.

The petitioner in that document styles himself owner of the plantation "La Fundación."

The honorable Acting Secretary of State, David J. Hill, in his note of April 29, 1901, addressed to Mr. Heny's attorney, Charles A. Hansmann, in answer to the claim presented by said attorney against the Government of Venezuela for damages caused by the destruction, occupation, and confiscation of Heny's property by military forces if the Venezuelan Government and by revolutionary troops, determined and specified that Mr. Heny should produce the contract made with Benitz heirs by virtue of which he was managing the plantation, or any other proof that the property taken and destroyed belonged to him. To comply with this requirement the claimant has presented to the Commission the private agreement executed on May 1, 1892, by the widow and children of Mr. Benitz, deceased.

The honorable agent for the Venezuelan Government objects to the efficacy of this contract or private document as establishing the proof of ownership in favor of Heny, of property rights in the estate "La Fundación" as to third parties, inasmuch as said document lacks official certification as to the exactness of the date and has not been authenticated and recorded in the public register's office of the district where the estate is situated, in conformity with the law. In proof of his assertion the honorable agent has produced two deeds marked "A" and "B;" the first of which, dated March 8, 1878, refers to the purchase of the estate "La Fundación" by Mr. Carlos Benitz, and the second, dated November 28, 1898, in which it appears that Mr. E. Heny, acting as attorney for Juan Remsted, on July 2, 1896, by deed duly recorded in the city of La Victoria in the public register's office, bought, for said Remsted, from the widow and children of Mr. Benitz, the plantation called "La Fundación" for the sum of 80,000 bolivars, with an agreement of resale for the same amount to Messrs. Benitz within a stipulated term. It also appears from the last-mentioned deed that the Benitz heirs, after having availed themselves of the privilege of repurchasing the estate "La Fundación" by paying to Remsted the sum of 80,000 bolivars, and thus having reacquired the ownership of said estate, the same heirs of Benitz, and among them Bertha Benitz, acting under the authorization of her husband, E. Heny, made a new sale to Mrs. Altagracia H. de Ortega Martinez, of the same plantation, free of all incumbrances for the sum of 36,000 bolivars, reserving to them the privilege of repurchasing within the term of one year, and Messrs. Benitz remaining as tenants of the plantation. This deed, signed by E. Heny, as attorney for J. Remsted, is authenticated before the mercantile court of first instance of the Federal district on the 28th of November, 1898, and was recorded in the public register's office of the district Ricaurte, on December 2 of the same year.

It appears from the foregoing that the question of the rights that Mr. Heny alleges to have acquired in the real property, "La Fundación," prior to the dates on which the acts committed by the Government and revolutionary forces took place, and which rights he claims as arising from the private contract between himself and Benitz heirs, is in itself a question which treats of the rights acquired in a real property situated within the territory of the Republic. All questions relating to real property are necessarily governed by the local law of the place where the property is situated, lex loci rei sitæ:

As everything relating to the tenure, title, and transfer of real property (immobilia) is regulated by the local law, so also the proceedings in courts of justice relating to that species of property, such as the rules of evidence and of prescription the forms of action and pleadings, must necessarily be governed by the same law.

Thus real property is considered as not depending altogether upon the will of private individuals, but as having certain qualities impressed upon it by the laws of that country where it is situated, and which qualities remain indelible, whatever the laws of another State or the private dispositions of its citizens may provide to the contrary. That State where this real property is situated can not suffer its own laws in this respect to be changed by these dispositions without great confusion and prejudice to its own interest. Hence it follows as a general rule that the law of the place where real property is situated governs as the tenure, title, and descent of such property. (Lawrence's Wheaton's Elements of International Law, pp. 196, 116, Part II, Chap. II.)

The contract made between the heirs of Benitz and Heny, in May, 1892, is not a contract of sale by which the dominion of the real estate is transferred in conformity with the laws that govern such contracts, because in order to be so considered required the explicit statement that the real estate was given in sale for a stated price; and furthermore, the local law required that in order to be valid as to third parties the document must be recorded at the register's office of the district where the said real estate is situated. Neither is it a mortgage contract, because, although the word guarantee is employed, it lacked one of the two essential legal conditions that characterize the mortgage, and that is the publicity which is obtained according to the law by employing the essential formality of registering in the proper office of the place where the real estate is situated. From the terms of the said contract the only inference which might be drawn is that it was the intention of the parties to celebrate an antichresis, giving to the creditor the right of reaping the fruits of the estate delivered to him, with the obligation of annually crediting the value thereof against the interest, if any was due to him, and any remaining balance against the principal standing to his credit; but besides the terms, which characterize a contract of antichresis, being imperfectly defined in the said contract, because there is no stipulation that the creditor acquired the right to reap the fruits, with the obligation of crediting the value thereof against the interest and principal due him, in order that this contract of antichresis might be valid against third parties, it was necessary that the formality of registry should likewise be complied with as being essential for its effectiveness.

The said document, such as it is, only established a subsidiary guaranty between the debtor and the creditor, which did not cancel Heny's credit against the Benitz heirs, neither transferred to Heny any actual right in the real estate belonging to said Benitz heirs, because that transfer to make it effective against third parties would have had to be made public and made in accordance with the law governing the tenure, the title, and the transfer of the real property in

the place of its situation. The law in such cases, demands as an essential requisite for the transfer of rights in real estate, to produce effect against third parties, the recording thereof in the office of the public register in the respective district.

The Benitz heirs, owners of the estate "La Fundación," in 1892, became direct creditors of the Government of Venezuela, by reason of the acts damaging said estate and committed by the forces of the "Revolución Legalista," and the said heirs, as regards their relations to the Venezuelan Government, being as they were, the only owners of the estate called "La Fundación" as per public title, duly recorded, and it was in virtue of this ownership only that General Fernandez executed to the Benitz heirs an acknowledgment of their credit against the Government of Venezuela, and it was for the same reason that E. Heny, presented to the minister of finances and public credit, as attorney of the Benitz heirs, and on behalf of said heirs, owners of the estate "La Fundación" against the said Government, the claim for the amount of this credit.

This opinion is confirmed by the remarkable circumstance that four years after the celebration of the private agreement between the Benitz heirs and Heny, the Benitz heirs appear on record as signing a deed of sale of the estate "La Fundación" in favor of Mr. Juan Remsted, and the same Mr. Heny accepted the said sale as attorney for Remsted without making any reservation as to the rights which he had acquired in the income and value of the estate, as security for the payment of his personal credit against the Benitz heirs. This acceptance of the transfer of the real estate to a third party given by Heny implies one of two conclusions: Either Mr. Heny had been paid by the Benitz heirs on or before that date the amount personally due to him or by such act he released his rights against the estate "La Fundación" which the Benitz heirs had accorded him as a guaranty for any loss that he might incur because of his prior investments in the said estate. In either case all legal rights or privileges established by the private contract of 1892, in reference to the estate "La Fundación," even considering said contract as antichresis, became null and void, and without effect whatsoever.

It appearing proven by the public deed presented by the honorable agent of Venezuela, dated November 28, 1898, that the estate "La Fundación" was again sold to Mrs. A. H. de Ortega Martinez, by the same heirs of Benitz as owners, this evidence destroys Heny's pretension to the payment of the damages caused to the real estate "La Fundación" in 1899, which constituted the second part of his claim, because on that date the said estate did not belong to him.

The circumstance which is argued that the estate "La Fundación" was cultivated and developed with Mr. Heny's money does not establish any juridical bonds between him and the Venezuelan Government, as relating to the damages caused to the property by Government or revolutionary troops, as such damages can only be claimed of the Venezuelan Government by such parties who by duly registered and authenticated titles appear as the legitimate owners of the damaged property. To admit as competent for recognition as a claimant before this Commission, anyone who may advance money for the cultivation and development of estates or property belonging to Venezuelan citizens, would be equivalent to bringing before this Commission all foreigners who make a business of advancing money to the owners of real property either by private contracts or by virtue of contracts in

which a mortgage on the property so benefited is given, a common practice between the foreign merchants established in this country and Venezuelan proprietors and agriculturists.

In consequence, my opinion is that this claim should be disallowed.

BARGE, *Umpire:*

A difference of opinion arising between the Commissioners for the United States of America and the United States of Venezuela this case was duly referred to the umpire.

The umpire having fully taken into consideration the protocol, documents, evidence, and arguments, and likewise all other communications made by the two parties, and having carefully and impartially examined the same, has arrived at the decision embodied in the present award.

As to the first claim of the claimant:

Whereas it is clearly proven that in the months of September and October, 1892, during the so-called "Legalista" revolution, at the hacienda "La Fundación," the plantations of that estate were partially destroyed; horses, cattle, and other valuable property confiscated, and sums of money obtained as loans by the troops of the revolutionary party for the use and service of the revolutionary army under the authorization of the military chiefs;

And whereas the revolution proved ultimately successful in establishing itself as the de facto Government so that the liability of the Venezuelan Government for these acts can not be denied;

And whereas Emerich Heny, who has proved himself a citizen of the United States of America, claims that the sum owed by the Venezuelan Government as restitution for the above-mentioned acts is due to him, and as proof of his rights in the above-mentioned damages, confiscated properties and loaned moneys produces an instrument bearing date of May 1, 1892, and containing a contract between himself and the heirs of Carlos Benitz, who, according to the evidence produced before the Commission, were on the date of the above-stated facts the owners of the said estate "La Fundación."

Whereas, therefore, it has to be considered to what extent this contract gives the claimant any right to the claim in question.

Whereas this contract reads as follows (translation):

We, Emilia B. de Benitz, a widow; Matilda Benitz, Adolfe Benitz, Emilia Benitz, Gustavo Benitz, unmarried, residing in this city, of more than twenty-one years of age, and sole heirs, conjointly with Bertha Benitz de Heny, wife of E. Heny, of Mr. Carlos Benitz; declare that owing as we do to Mr. E. Heny, the sum of $12,606 pesos sencillos and 80 centesimals, besides other sums that we owe to sundry other creditors of our estate "La Fundación," to the amount of 26,833 pesos and 33 centesimals, for money supplied by E. Heny, for the improvement, maintenance, and cultivation of our sugar-cane estate called "La Fundación," situated at Las Tajerías, jurisdiction of the municipality of Consejo, district of Ricaurte, of the State of Miranda, the boundaries of which are in conformity with the title of property which, as heirs of our principal, Mr. Carlos Benitz, is in our possession and is registered under Nos. 38 and 41, of the first and second protocols, of the first quarter, under date of March 11, 1878 (1878), we hereby assign, cede, and transfer in favor of the said Mr. E. Heny, all the rights and actions that correspond to us or may to us correspond in future in said property, "La Fundación," as a guaranty to said Heny for any loss he may sustain in the capital he has invested in said estate, Heny remaining bound to answer for the other debts incurred by the said estate, which he is to pay off when we make, as we do now make, formal cession in his favor of our credits in said estate; to the accomplishment of what is herein agreed to, we bind our present and future property, in accordance with the law.

E. Heny, over 21 years of age, wedded to Bertha Benitz, residing in this city, do accept the above transfer and bind myself to carry out my share of the agreement. Caracas, May 1, 1892.

EMILIA B. DE BENITZ,
MATILDA BENITZ,
(And others in interest.)

And whereas it is clear that in this contract, stating that they owe the claimant Heny the sum of 12,606 pesos sencillos and 80 centesimals, as invested by him in the estate "La Fundación," and that they owe besides 26,833 pesos and 33 centesimals to sundry others whom they call "creditors of our estate La Fundación," thereby indicating that this sum as well was invested in said estate, the heirs of Carlos Benitz wanted to give a guaranty to Heny for any capital invested by him in that estate and at the same time wished to be freed from the other debts incurred by said estate, and therefore transferred to him, Heny, their credits in that estate, whilst he agreed to answer for all the debts;

Whereas, certainly this contract is neither a mortgage nor a sale of the estate and, lacking the characteristic stipulations of an antichresis, can not properly be counted to that species of contracts, to which, in substance, it seems to bear most resemblance;

Whereas, however—whatever may be the technical deficiencies of the instrument—whilst interpreting contracts upon a basis of absolute equity, what the parties clearly intended to do must primarily be considered;

And whereas, it was clearly the intention of parties that no one but the claimant should have a right to expropriate anything belonging to this estate, nor to profit by the revenues, at all events so long as his interest in the estate should last, which interest the heirs wished to guarantee; and whereas this interest existed as well in the sum invested by him in the estate as in the debts he assumed and which he might pay out of the estate, the credits and debits of which were equally transferred to him by the owners; whereas, therefore, according to this contract at the moment the facts which obliged the Venezuelan Government to restitution took place, the only person who directly suffered the "detrimentum" that had to be repaired was the claimant E. Heny;

Whereas, it being true that according to the principles of law generally adopted by all nations and also by the civil law of Venezuela; contracts of this kind only obtain their value against third parties by being made public in accordance with the local law—in this claim before the Commission, bound by the Protocol, to decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation, this principle can not be an objection, and even when made this objection may be disregarded without impairing the great legal maxim, locus regit actum, as equity demands, that he should be indemnified who directly suffered the losses, and it not being the question here who owned the estate "La Fundación," but who had the free disposition over and the benefit and loss of the values for which restitution must be made, and who, therefore, in equity, owns the claim for that restitution against the Venezuelan Government.

Whereas then, it being stated that the American citizen E. Heny owns a claim against the Government of the United States of Venezuela for the partial destruction of the plantations, the confiscation of

horses, cattle, and other valuables, and the imposing of loans upon the estate "La Fundación" during the "Legalista" revolution in 1892, it now remains to state, what sum may in equity be claimed on this ground;

And whereas the claimant, to prove the correctness of the sum, produces an official certificate of Gen. Antonio Fernandez, civil and military chief of the State of Zulia, and chief of the second division of the army of the center during the "Legalista" revolution, which certificate was thereafter recognized by said General Fernandez, and the correctness of its contents affirmed before the court of the first instance in civil and commercial matters of the Federal district, by him as well as by two other sworn witnesses; and whereas this certificate reads as follows:

CIVIL AND MILITARY HEADQUARTERS OF THE STATE OF ZULIA,
Maracaibo, March 7, 1893.

Citizen Gen. Antonio Fernandez, civil and military chief of the State of Zulia, and chief of the second division of the army of the center during the Legalista revolution certifies: That the statement at the foot of this document sets forth the pro rata supplies furnished the army of the revolution by the plantation called "La Fundación," situated at Las Tejerías, the property of the heirs of Señor Carlos Benitz, whose general agent and representative is Señor E. Heny.

Twenty-four tablons[a] of sugar cane, at 2,000 bolivars each, 48,000 bolivars; 12 tablons malojo, at 800 bolivars, 9,600 bolivars; 4 saddle horses, at 800 bolivars each, 3,200 bolivars; 1 tablon maize, at 600 bolivars; 2 cart horses, at 800 bolivars each, 1,600 bolivars; 1 breeding mare, 400 bolivars; 1 mare with her colt, 480 bolivars; 11 yokes of oxen, 8,800 bolivars; 1 single ox, 400 bolivars; lumber prepared for building and other uses, 1,200 bolivars; 3 kilometers of fences with their posts destroyed, 1,600 bolivars; in money, forced loans of 1,458 bolivars; and from the business house at "Las Tejerías," 33 cattle, each 120 bolivars, 3,960 bolivars; merchandise and tools from same store, 8,000 bolivars; for loss of time in consequence of the war, 48,000 bolivars; chief steward paid for Antonio Fernandez at the rate of 600 bolivars for eight months, 4,800 bolivars; sum total, 92,498 bolivars.

And whereas by this certificate evidence is given of the facts therein mentioned;

And whereas the estimation of the therein-mentioned values has to be recognized as just, being the authentic estimate of the authority that expropriated said values for the benefit of the army;

And whereas it is thus stated that claimant furnished to the army:

	Bolivars.
24 tablons of sugar cane, at 2,000 bolivars each	48,000
12 tablons malojo, at 800 bolivars each	9,600
1 tablon maize	600
4 saddle horses, at 800 bolivars each	3,200
2 cart horses, at 800 bolivars each	1,600
1 breeding mare	400
1 mare with her colt	480
11 yoke of oxen	8,800
1 single ox	400
Lumber prepared for building and other uses	1,200
In money, forced loan	1,458
And from the business house in Las Tejerías on the estate "La Fundación:"	
33 cattle, each 120 bolivars	3,960
Merchandise and tools from same store	8,000
Chief steward paid for Antonio Fernandez, at the rate of 600 bolivars per month for eight months	4,800
Total	92,498

[a] One tablon = about 10,000 square varas.

This sum has to be paid as a restitution to the claimant by the Venezuelan Government, and to it should be added the value of 3 kilometers of fences and posts destroyed by the military authority and estimated by that authority at 1,600 bolivars, making altogether 94,098 bolivars;

Whereas the claimant further claims 48,000 bolivars for loss of time in consequence of the war, which sum is also mentioned in the above-cited certificate;

And whereas this certificate, although being evidence of the facts therein stated, which were the cause of the debits incurred by the Government, and containing the estimate by the proper authorities of the values claimant was deprived of, it is, however, not in itself a causa, and does not create a debit where the causa is wanting;

And whereas the interruption of the ordinary course of business is an invariable and inevitable result of a state of war under which all inhabitants, whether citizens or aliens, have to suffer; and whereas losses incurred by reason of such interruption are not subject to compensation by the Government within whose territory the war exists;

Whereas, therefore, loss of time in consequence of the war, is not a loss whereupon compensation can be equitably demanded; this part of the claim has to be disallowed.

In view of the foregoing an allowance is made in this claim for the sum of 94,098 bolivars, or, with interest thereon at 3 per cent per annum from March 15, 1893, the date of the presentation of the claim to the Venezuelan Government, to December 31, 1903, the anticipated date of the final award by this Commission.

And as to the second claim:

Whereas claimant claims 12,000 bolivars for 4½ tablons of growing sugar cane, confiscated and set aside for the food of the soldiers and taken and destroyed on the estate "La Fundación" during the months of November and December, 1899; and whereas the Venezuelan Government produced a deed authenticated before the mercantile court of first instance of the Federal district, on the 28th of November, 1898, and recorded in the public register's office of the district of Ricaurte, on December 2, of the same year; and whereas in this instrument it is stated that on the 25th of November, 1898, the heirs of Carlos Benitz and among them Bertha Benitz, acting under the authorization of her husband E. Heny, made a sale to Mrs. Altagracia H. de Ortega Martinez, of the same estate, "La Fundación," free of all incumbrances, for the sum of 36,000 bolivars, with an agreement of resale within the term of one year.

And whereas it is proven thereby that on the 28th of November, 1898, the claimant Heny, without reserve as to any of his own rights authorized his wife, Bertha Benitz, to partake in a sale of the said estate free of all incumbrances and that this sale was effected; whereas, therefore, on that date Heny lost or abandoned whatever rights he might have had in this estate or its appurtenances and revenues;

And whereas no proof is given that the claimant acquired or recovered any right in the estate or its appurtenances and revenues later than this 28th of November, 1898; whereas, therefore, it is not proven that the claims against the Government of Venezuela for restitution for losses suffered on the estate "La Fundación" during the months of November and December, 1899, is owned by the claimant, this claim ought to be disregarded.

BOULTON, BLISS & DALLETT CASE.

Equitable demands may be received under the protocol as "claims."
An award will be made in favor of parties who under an implied contract have rendered services to the Government.

PAÚL, *Commissioner* (for the Commission):

The United States presents the claim of Boulton, Bliss & Dallett, against the Government of Venezuela, for the sum of 257,027.02 bolivars, for services rendered.

The claimants are the owners of the "Red D" line which runs between New York and several ports of the Republic of Venezuela.

The claim is founded on services rendered to the Government of the Republic, for carrying the mail from the Venezuelan ports to New York from April 1, 1897, to December 31, 1902, and also on the interest of the stated sums in which such services are annually estimated.

The claimants acknowledge that no express contract exists fixing a rate of compensation, but that the mail has been carried by their steamship line, at the request of employees of the Government of the Republic, and under the promise that they should be paid a just and reasonable compensation.

The agents of Boulton, Bliss & Dallett, in Caracas, have presented, from time to time, memorials, to the Government of Venezuela, indicating the weight of the bags that were carried; and in a letter dated March 9, 1899, the said agents complained that until such date negotiations have not been entered upon, with a view to arriving at a contract.

In view of the facts, as they appear from the documents submitted with the claim, it is necessary, owing to the special nature of the same, to determine if they really constitute a proper basis for presenting a claim to be examined and decided by this Commission.

In accordance with Article I of the protocol of Washington, it is incumbent upon this Commission to examine and decide—

All claims owned by citizens of the United States of America against the Republic of Venezuela, which have not been settled by diplomatic agreement or by arbitration between the two Governments. (See p. 1.)

It is not opportune to make any comments with regard to the limitations and pertinancy that enter as elements for the qualification of the claims submitted to the jurisdiction of the Commission as established by the terms of said article of the protocol; but it is necessary to fix the meaning of the word "claim" so as to be able to infer if the demand presented, in the name of Boulton, Bliss & Dallett, properly constitutes a claim.

The word "claim," in its most general meaning and in its juridic sense is equivalent to a pretension to obtain the recognition or protection of a right, or that there should be given or done that which is just and due.

In the meaning of the word "claim" there is therefore included any kind or character of demand which involves a principle of justice and equity, and this in the abstract applies to the jurisdictional faculties of this Commision and the circumstances, which in accordance with the especial terms of Article I of the protocol limits that jurisdiction. The amplitude of the phrase "all claims" makes it possible that even

the demands which are unforeseen by the law, or which, by the absence of proper agreements lack juridical foundation entitling them to be examined and confirmed under the proceedings of an ordinary court, must be considered by this Tribunal of exceptional jurisdiction which has to decide them upon their merits and upon a basis of absolute equity.

In accordance with the reasoning, the claim presented by the honorable agent of the United States, in the name of Boulton, Bliss & Dallett, possesses the necessary qualification to be examined and decided by this Commission under the principles of justice and equity which should guide its judgments.

The rendering of services, is the fundamental fact of the claim in question. These services consist in the carrying of the mail by the steamships of the "Red D" line from April 1, 1897, to December 31, 1902. The special nature of this service required, in order to establish the juridical bond, which creates obligations and rights between the two parties, the existence of an agreement or mutual understanding which will establishes the precise price which must be paid. The efficacy of the convention or agreement is of primary consideration in this kind of operations. Without it the claim for services does not exist but is only a gratuitous service. This last position was the one that Boulton, Bliss & Dallett maintained before the Government of Venezuela for near half a century, from the date that the vessels, between New York and the Venezuelan ports began their running, until the 2d of March, 1897, on which date the minister of fomento was notified to the effect that from April 1 of that year they would charge the Venezuelan Government for the carrying of mail bags, not only to the ports of Venezuela that the steamers visit, but to Curaçao, United States and Europe, the following set prices: Eight bolivars per gross kilogram of letters and cards, and 0.50 of bolivar per gross kilogram of printed matter.

The agents of the line indicated in the same letter of March 2, 1897, that the bags should be weighed, on board of the steamers, before the agents of the Government and the agents of the line in each port, advising the weights to the respective post-office for its record.

On January 15, 1898, the ministry of fomento issued, under No. 281, a resolution ordering the La Guaira post-office master, to give to the agents of the "Red D" line a note of the weight of the bags sent by the American steamers, and on March 6, 1899, and December 10, 1900, the same ministry, on the petition of Messrs. Boulton & Co., repeated its instructions in order to give the said agents, through the corresponding post employees, the note of the weight of the bags embarked on board the steamers of the line.

Two elements tend to define the relations established between Messrs. Boulton, Bliss & Dallett and the Venezuelan Government, with reference to the transportation of the mail, as it appears from the notes exchanged between the two parties, since March, 1897. The first is that Boulton, Bliss & Dallett should charge the Government, from April 1 of the same year, 8 bolivars per gross kilogram of letters and cards, and 0.50 of bolivar per kilogram of printed matter and samples; and the second, that the Government virtually accepted the said tariff from the moment that it ordered its post-office employees to take the weight of the bags and send it each time to Boulton & Co., as it was requested by them, in order to make the liquidation of the amount which the

Government should have to pay for the service. These two elements are enough to deduce in justice the following conclusion: The Government of Venezuela owes to Boulton, Bliss & Dallett, for carrying the mail on the steamers of the "Red D" line, from April 1, 1899, to December 31, 1902, the resulting sum of the two factors agreed by both parties, gross weight in kilograms of letters and cards, and gross weight in kilograms of printed matter and samples, and the sum of 8 bolivars per kilogram for letters and cards, and 0.50 of bolivar per kilogram of printed matter and samples.

This could be a simple arithmetical calculation which would not embarrass the Commission, but one of the factors is lacking, namely, the separate weight of the letters and printed matter, as the bags which the post-office employees weighed contained, indiscriminately, letters, cards, printed matter, and samples, and has been taken by Messrs. Boulton & Co. to establish their account with the Government, making an arbitrary distribution of a sixth part for letters and cards and five-sixths part for printed matter and samples. There has not been presented before this Commission any proof or information which may establish that such distribution is equitable and well founded, and in consequence the real weight of letters and cards, and that of printed matter and samples, remains undetermined in the total sum which the gross weight of the bags represents in the period of five years and nine months comprised in their claim.

It is opportune to point out the difference exhibited by the first letter of Boulton & Co., date of June 14, 1898, which gives as gross weight of the bags which were carried by the steamers during a year from April 1, 1897, to March 31, 1898, the sum of 62,661.149 grams, in comparison to that of May 9, 1899, corresponding to the preceding year, which makes the weight of the bags to be 24,091.076 grams, a less weight in one year of quite the two-thirds. There must exist a grave error in the first calculation, since from April 1, 1898, to April 1, 1899, the business conditions of the country were the same as those of the preceding year, without the existence of any special motive to which such extraordinary diminution of volume and weight of the United States and Europe's mail could be attributed. This observation is confirmed by the facts belonging to the following years, which have a reasonable proportion as it is proven by the following figures:

	Grams.
From April 1, 1898, to April 1, 1899	24,091.076
From April 1, 1899, to April 1, 1900 (Time of war.)	18,398.396
From April 1, 1900, to December 31, 1900	15,070.630
From December 31, 1900, to December 31, 1901	15,479.608
From December 31, 1901, to December 31, 1902 (Period of war.)	14,176.231

As the Commission has no means of ascertaining the precise data which establish clearly the gross weight of the two classes in which the different kinds of mail were proposed to be divided, as accepted by the Venezuelan Government, and considering also that the figures given for the gross weight of the bags of the year 1897 to 1898 are not in proportion with the weight of the following years and the absence of any document to prove the exactness thereof; and furthermore, as this claim has to be decided only on the proofs and information presented by both parties on the basis of absolute equity; and

taking also in consideration that Messrs. Boulton & Co., agents, in this city, of the "Red D" line, have several times made proposals to the Venezuelan Government to execute a contract fixing an annual sum for the carrying of the mail, it is my opinion that it is necessary to estimate the average of the accounts as made up by the agents of Boulton, Bliss & Dallett for the last five years. That average gives the sum of 29,474 bolivars, which I consider admits of a reduction to the sum of 25,000 bolivars, as the natural rebate which all debtors are entitled to, when the creditor fixes the price for services rendered, especially when they amount to a considerable sum extending over a period of years.

Having thus determined the annual price for carrying of the mail and calculating the time elapsed from April 1, 1897, to December 31, 1902, or five years and nine months, the value of the service comes to the sum of 143,750 bolivars.

With reference to the interest the circumstances set forth in this opinion makes it apparent that the claim is presented under conditions which do not justify the allowance of interest.

Therefore, an award is hereby made in favor of Boulton, Bliss & Dallett for the sum of 143,750 bolivars, equivalent in American gold, at the average rate of exchange, to $27,644.23.

THE ALLIANCE CASE.

The registry or other custom-house document is only prima facie evidence as to the ownership of a vessel in some cases, but conclusive in none. Property in a ship is a matter to be proved like any other fact by competent testimony.

A vessel driven by stress of weather into a port other than that for which she is destined is not subject to the application of local laws which would render it liable to penalties or unnecessary detention, and damages for its unreasonable detention will be allowed.

Interest allowed on claim from date of its presentation.

BAINBRIDGE, *Commissioner* (for the Commission):

The steamer *Alliance* was built at Curaçao in 1895 for Leonard B. Smith, a native citizen of the United States then domiciled in that island. She was 59 feet 4 inches in length, 12 feet 10 inches in breadth and 5 feet in depth, with a capacity of 41 tons, and cost the sum of $12,030.03. Smith registered the *Alliance* as a Dutch ship, and she carried the Dutch flag until February, 1897. He then made arrangements to use the ship in the trade between Santo Domingo and Curaçao, but found that it would be necessary to register her as a Dominican ship in order to be permitted to trade along the Dominican coast. The memorialist says:

To comply with said laws still further the papers were taken out in the name of Carlos A. Mota, a citizen of Santo Domingo, who, however, never acquired any real interest in the *Alliance*, his title being purely nominal, and the vessel continued to be still the property of myself solely.

The Dominican registry, given February 20, 1897, is, in part, as follows:

The President of the Republic to all to whom these presents may come, greeting: The citizen Carlos A. Mota, having proved that he is the lawful owner of the Dominican steamer *Alliance*, its captain being at present the citizen, Martin Senior, and said owner, C. A. Mota, having furnished the bond required by law, I, therefore, grant him this letter of marque, etc.

On June 15, 1897, the *Alliance* sailed from Santo Domingo under the Dominican flag with clearance for Curaçao.

On the morning of the 20th she was discovered on the shoals of the bar at Maracaibo flying a signal of distress. Epitasio Ríos, one of the pilots of the port, thus describes her condition at the time:

> We descried from San Carlos a vessel with the flag hoisted, asking for assistance, on the shoals of the bar, near the place where the bark *Bremen* lies a wreck. I immediately left to send her the proper assistance, reached where she was at about 8 o'clock in the morning, and at once observed that the vessel, as well as her crew, was running the greatest risk. The vessel is a small steamship, bearing the name *Alliance;* she had the Dominican colors hoisted; her fuel being exhausted it was necessary to break the windows to the cabin, 1 cask and some cots, with which, and even empty bags, her engine could get up 40 pounds of steam, which enabled us to arrive at San Carlos, where the commander of that fortress supplied her with firewood, provisions, and water, of all which elements the vessel was absolutely in want, and with which we could come that very day to Maracaibo. The steamship was at that moment leaking in consequence of the blows she had sustained by touching on the shoals of the bar.

Upon the arrival of the *Alliance* at Maracaibo, she was seized by the collector of the port on suspicion of unlawful traffic in fraud of the revenues of Venezuela. Proceedings were had before the captain of the port and the national court of finance of Maracaibo, which court on August 14, 1897, after a full investigation, decreed that the *Alliance* and her cargo were freed from sequestration and to be returned to the owners. An appeal from this decree was taken by the Government to the high court at Caracas, which on November 12, confirmed the decree of the lower court. The high court held that "an uncontrollable force drove the *Alliance* into the harbor and that nothing had been adduced to show that there was the slightest intention to violate any of the laws of the Republic or defraud the revenues." This decree of the high court was published in Caracas on December 1, 1897. The *Alliance* was restored to the agent of Mr. Smith on January 11, 1898. In the court proceedings the value of the ship and cargo is stated to be 28,472.40 bolivars, equivalent to $5,475.46 United States gold.

On April 15, 1898, a claim was presented to the Government of Venezuela by the United States, through its legation at Caracas, on behalf of Leonard B. Smith as owner of the *Alliance.* The claim was summarized as follows:

Expenses incurred by reason of the seizure and detention of the *Alliance*	$3,439.32
Damages to the steamer resulting from detention	2,000.00
Interest on investment at 1 per cent per month during detention	800.00
Total	6,239.32

Leonard B. Smith died intestate at Curaçao December 16, 1898, leaving him surviving his widow, Clara M. Smith, and three sons, Arthur B. Smith, Leonard G. Smith, and Ralph G. Smith, as his only heirs and next of kin, in whose behalf the claim is now presented to this Commission. In addition to the original demand, the sum of $1,007 is asked for accrued interest.

Replying on April 26, 1898, to the diplomatic note of the United States legation presenting this claim, the minister of foreign relations of Venezuela interposed two grounds of non-liability:

First. That the *Alliance* was proved to be a Dominican ship, a nationality other than that of the claimant.

Second. That the action taken by the Venezuelan authorities in the seizure and detention of the vessel was in line of the strict performance of their duties under the law of Venezuela for the protection of the revenues, and that no claim can be sustained growing out of the necessary observance of the local law.

The honorable agent for Venezuela refers the Commission to the diplomatic note of the minister of foreign relations as his own answer to the claim.

The first objection is rather suggested than urged by the Venezuelan Government. Nevertheless as touching the jurisdiction of the Commission over the claim, it must be fully considered. The record shows that upon her arrival at Maracaibo, the *Alliance* was carrying the Dominican flag; that she had a Dominican registry, based upon a showing that Carlos A. Mota, a citizen of Santo Domingo, had proved that he was the lawful owner of the Dominican steamer *Alliance*, and as such owner had furnished the bond required by law; that this registry had been obtained with the knowledge and by the connivance of Smith through his agent and representative at Santo Domingo, Jáime Mota. But whatever may have been the morality of this proceeding, it is not conclusive against the American ownership of the vessel:

The registry or enrollment or other custom-house document is prima facie evidence only as to the ownership of a ship in some cases, but conclusive in none. The law even concedes the possibility of the registry or enrollment existing in the name of one person, whilst the property is really in another, Property in a ship is a matter in pais, to be proved as fact by competent testimony like any other fact. (Wharton, Int. L. Dig., sec. 410, citing U. S. *v.* Pirates, 5 Wheat., 184. U. S. *v.* Amedy, 11 Wheat., 409, and other cases.)

If as a matter of fact the *Alliance* was owned by a citizen of the United States, she was American property and possessed of all the general rights of any property of an American. (Ibid.)

The evidence of ownership is to the effect that the *Alliance* was built for L. B. Smith at Curaçao by Felipe Santiago, as shown by the builder's certificate; that the Dominican registry was secured in order to enable the vessel to trade along the Dominican coast; that Carlos A. Mota never acquired any real interest in the ship, his title being purely nominal; that the vessel actually continued to be the sole property of L. B. Smith, and that at the close of the investigation by the Venezuelan court she was returned to Mr. Smith's possession.

The second objection interposed by the Government of Venezuela to this claim is succinctly stated in the following paragraph of the reply of the minister of foreign relations:

The steamer *Alliance* was detained by the captain of the port in accordance with a provision of the fiscal code which the authorities deemed applicable to the case in view of the manner in which the ship arrived. A ship which enters the waters where a State has jurisdiction, can not, if it is a merchant ship, be exempt from the disposition and rules in regard to Territorial jurisdiction. Fiore recognizes this in his celebrated work (Nouveau Droit International Public, 815), and Calvo is explicit on this point, 451. F. de Martens in his recent treatise on International Law is even more categoric, when he states (Vol. II, 56) that the merchant ships anchored in a port or the waters of a foreign State are subject to the laws and local authorities. The steamer *Alliance*, even though it may have arrived in distress, entered the teritory where Venezuelan legislation was in force.

The minister argues that the authorities of the port would have been grossly derelict in their duty if they had not instituted the process and detained the vessel; and that no claim can be sustained for losses growing out of the necessary and proper observance of the local law.

With due respect, however, the vital question presented here is whether the *Alliance*, although within Venezuelan waters, was, under all the circumstances, subject to the laws and local authorities. There can hardly be any doubt that the ship arrived at the bar of Maracaibo in great distress. Her condition at the time is graphically described in the testimony of the pilot, Epitasio Ríos, quoted herein. Furthermore, she bore with her upon her arrival in port the following pass from the commander of the fortress of San Carlos:

JUNE 21, 1897.

Allowed to go to Maracaibo, having made forcible arrival on account of lack of coal and provisions.

The Commander in chief of the port. MANUEL PAREJO.

Under these conditions, the exemption of the *Alliance* from Territorial jurisdiction is clear. The identical question here involved was considered in the case of the brig *Enterprise*, decided by the American and British Claims Commission of 1855. The Commissioners, although disagreeing on other grounds, were unanimous upon the proposition that, as a general rule:

A vessel driven by a stress of weather into a foreign port is not subject to the application of the local laws, so as to render the vessel liable to penalties which would be incurred by having voluntarily come within the local jurisdiction. The reason of this rule is obvious. It would be a manifest injustice to punish foreigners for a breach of certain local laws, unintentionally committed by them, and by reason of circumstances over which they had no control. (Moore, p. 4363.)

In the case of *The Gertrude* (3 Story's Rep., 68), Mr. Justice Ware says:

It can only be a people, who have made but little progress in civilization, that would not permit foreign vessels in distress, to seek safety in their ports, except under the charge of paying import duties on their cargoes, or under penalty of confiscation, where the cargo consisted of prohibited goods * * *.

Nor did the laws of Venezuela impose upon the authorities of the port any duty contrary to the principles of civilized jurisprudence or the dictates of humanity and hospitality. Law XXIV of the Finance Code in force at the date of the arrival of the *Alliance*, and which is the same as Law XXV of the existing code, provides in its first article that:

the formalities prescribed by the law for the entrance of vessels coming from a foreign country into the ports of the republic shall not be enforced in the cases of forcible arrivals, which are the following: Damages on board, sickness of the crew, whether contagious or not, and acts of God absolutely preventing it from proceeding on the voyage.

Articles 2, 7, and 8 of the same law prescribe the formalities that must be pursued by the administrative authorities of the port to obtain the proofs of the real causes of the arrival, and to assist the vessel, passengers, and cargo with all necessary means of protection and security during the enforced stay of the ship in port on account of repairs or other reasons in connection with the forcible arrival. Article 16 orders that—

the motives of the forcible arrival having terminated the administrator of the custom-house shall deliver the license of navigation and other papers to the captain, giving him two hours to sail out.

And article 17 provides that—

in cases where the cause of forcible arrival is not proved any ship coming from a foreign port and found to be anchored, without any justifiable reasons, in a port for which it was not cleared shall be liable to the penalties prescribed by Law XX of said code.

Only in the cases *where the cause of forcible arrival is not proved* and a ship is found to be anchored in a port *without any justifiable reasons* is it the duty of the administrator of the custom-house, in conformity with article 17 above quoted, to pass all documents to the judge of finance in order to initiate the corresponding trial.

In view of the evidence of the pilot Ríos, the wording of the pass given by the commander of San Carlos, the disabled condition of the vessel, and the testimony of the crew, which must have been taken by the captain of the port as required by law, can it be said that the cause of the forcible arrival of the *Alliance* was not proved, or that she was anchored in the port of Maracaibo without any justifiable reasons? And if not, there was no probable cause under the law of the country for the action of the port authorities and the subsequent judicial proceedings. The liability of the Government of Venezuela for the ascertainable loss or injuries resulting from the seizure and detention of the *Alliance* is, both upon reason and authority, established.

The claim is believed to be considerably exaggerated. The board of survey which examined the steamer upon her arrival at Curaçao on January 15, 1898, estimated "the complete repairs of said boat at the amount of two thousand dollars, so as to make her seaworthy." But it is to be remembered that the *Alliance* arrived in port at Maracaibo in a battered and disabled condition. Large sums of money are alleged to have been expended by claimants' intestate because of the seizure, but no vouchers therefor are put in evidence, although the claim was made within two months after the return of the ship to her owner.

An award will be made in this claim for the sum of $2,500, United States gold, with interest at 3 per cent per annum from April 15, 1898, the date of the presentation of the claim to the Venezuelan Government, to December 31, 1903, the anticipated date of the final award by this Commission.

The Mark Gray Case.

Claim disallowed for damages caused by the unavoidable detention of a vessel because of the want of facilities for towage from the harbor when the government had granted a monopoly to a company to perform this service and had subsequently appropriated the only vessel in possession of the company to its own use.

Bainbridge, *Commissioner* (for the Commission):

The United States presents the claim of J. S. Emery & Co., managing owners of the American schooner *Mark Gray*, against the Republic of Venezuela in the sum of $1,537.50, and interest amounting to $338.25.

The *Mark Gray*, W. A. Sawyer, master, was chartered on October 15, 1895, by Messrs. Kunhardt & Co., to carry a cargo of railroad material from New York to Maracaibo, Venezuela. The charterers agreed to pay all vessel's port charges at Maracaibo, including pilotage, lighterage, consul's fees, interpreter's fees, etc., and towage over the bar, and demurrage, beyond the lay days for loading and discharging cargo, at the rate of $30 per day for every day's detention by default of the charterers.

The schooner arrived at Maracaibo on December 11, 1895, finished discharging her cargo on the 28th, and could have left port two days

later had she been able to obtain towage; but in the absence of any towboat in the port the vessel was delayed at Maracaibo until February 17, 1896, when she finally got to sea by resorting to the unusual custom of sailing over the bar. When Captain Sawyer, after discharging cargo, inquired of the consignees and the towing agents for a tug, he was informed that the towboat was away in the service of the Government and that no definite information could be given as to when she would return.

On January 18, 1896, the captain wrote to Mr. A. Boncayolo, the charterers' agent at Maracaibo, as follows:

SIR: I beg to call your attention to the fact that for several days past the schooner *Mark Gray*, under my command, has been ready for sea but has been unable to leave for lack of towage. I must appeal to you as consignee of said vessel in this port and as agent of the charterers, Messrs. Kunhardt & Co., of New York, to furnish me with towage as provided for in my charter party. The agreement respecting towage in the charter party is as binding as that providing for the payment of freight or any other consideration specified in that document and the charterers of the vessel are not to be considered as having complied with their obligations until said vessel shall have been towed over the bar. I beg to call your attention, as charterers' agent, to these facts, protesting at the same time against the injury to the vessel's interests caused by this delay.

W. A. SAWYER,
Master American Schooner Mark Gray.

On January 27, 1896, Captain Sawyer made formal protest before the United States consul at Maracaibo—

against the charterers, Messrs. Kunhardt & Co., of New York, against the contractor for towage at Maracaibo, against the Government of Venezuela, and against all and every person and persons whom it may or doth concern, and against all and every accident, matter, and thing, had and met with as aforesaid, whereby and by reason whereof, the said schooner, or her interests, shall appear to have suffered or sustained damage or injury.

It appears from the record that the Venezuelan Government had granted a monopoly of the business of towing vessels across the bar at Maracaibo, and that the grantee of the privilege used in that business but one tugboat, which, at the time its services were required by the *Mark Gray*, was employed in the service of the Government itself.

The learned counsel for the United States urges on behalf of the claimants that the Venezuelan Government has made itself directly responsible for the demurrage and loss in this case, by granting the towage monopoly and then preventing the towage company from rendering the service by taking for the Government's own use the single tugboat operated by the company.

But the right of the Government of Venezuela to grant the franchise in question, by virtue of its proprietary interest in and exclusive jurisdiction over its territorial waters, is indisputable. And it is difficult to perceive wherein the Government, by making the grant, assumed any liability for the acts or omissions of the grantee. If such liability arises from the terms of the grant, that fact does not appear in evidence before the Commission. The protest of Captain Sawyer states:

That according to the agreement made by the contractor for towage with the Government of Venezuela, the said contractor is bound to keep tugs constantly ready for service at the Maracaibo bar.

A showing that the contractor did not keep tugs constantly at the bar is rather proof of his failure to observe his agreement with the Gov-

ernment than of the Government's liability to those who may have suffered from such failure, which is the claim made here.

Nor does the fact that the Government was employing in its service the only tugboat used by the contractor for towage fix a liability upon Venezuela for losses sustained by those who were unable, because of its employment by the Government, to secure the service of the tug. That circumstance may, indeed, have occasioned a loss to the claimants; but if so, it was not injuriously brought about by any violation of their legal rights and is damnum absque injuria.

The claim must be disallowed.

American Electric and Manufacturing Co. Case.

Owner is entitled to compensation for the seizure by the Government of property which it appropriates to its own use during a revolution for military purposes, and which is damaged while in its possession.

Claim for damages suffered by reason of the bombardment of a city, the bombardment being the necessary consequence of a legitimate act of war on the part of the Government, disallowed.

Paúl, *Commissioner* (for the Commission):

The claim of the American Electric and Manufacturing Company against the Venezuelan Government is based on two distinct groups of facts. The first is the taking possession of by the Government of the State of Bolívar on May 26, 1901, of the telephone office and service of the line for the use and convenience of the military operations during the battle, which took place in Ciudad Bolívar, until the 29th of said month, against revolutionary troops, and the damages which the property so occupied suffered in consequence thereof, owing to acts of destruction performed by the revolutionists. The amount claimed for such damages is the sum of $4,000.

The second group of facts consists in the damages suffered by the telephonic line in August, 1902, during the bombardment of Ciudad Bolívar by the vessels of the Venezuelan Government, the claim on this account being for $2,000.

By the documentary evidence presented it is proven that when the loyal troops of the Government were fighting the rebels of Ciudad Bolívar, Gen. Julio Sarria, constitutional President of the State, ordered the absolute interruption of all the telephonic service with the exception of the instruments which connected the house of said general with the military commander; the administrator of the custom-house; the marine custom's office; the police inspector's office; the telegraph office, and such other places as are stated in the note which he sent to Mr. Eugenio Barletta, manager of the company, dated May 26, 1901, and ordered also the occupation of the central office of the company, and stationed near the machinery an armed guard, which remained there until the town was evacuated by the Government troops.

It is also proven that the revolutionary forces destroyed the posts and wires of the lines and caused damages in the central office, destroying the switch boards and forcing the employees to abandon the office.

The general principles of international law which establish the non-responsibility of the Government for damages suffered by neutral property owing to imperious necessities of military operations within the radius of said operations, or as a consequence of the damages of a battle, incidentally caused by the means of destruction employed in the war which are not disapproved by the law of nations, are well known.

Nevertheless, the said principles likewise have their limitations according to circumstances established by international law, as a source of responsibility, when the destruction of the neutral property is due to the previous and deliberate occupation by the Government for public benefit or as being essential for the success of military operations. Then the neutral property has been destroyed or damaged by the enemy because it was occupied by the Government troops, and for that reason only.

It is the seizure of private property for the public use and its loss or destruction while so employed, whether by the enemy or the Government, that entitles the owner to payment. Even if it be morally certain that the enemy would himself take the property and use it, depriving the owner of it forever, still, its destruction by the Government entitles the party to compensation. (See Grant's case, 1 Ct. Claims, p. 41; and observations of Ch. J. Taney in Mitchell *v.* Harmony, 13 Howard, 115.) We must hold, even in such case, that the public has received the value of the property, by embarrassing its enemy by its destruction, and is bound to make just compensation. It can never be just that the loss should fall exclusively on one man, where the property has been lawfully used or destroyed for the benefit of all. (Putegnat's Heirs *v.* Mexico, 4 Moore Int. Arb., 3720.)

The seizure of the office and telephonic apparatus by the Government at Ciudad Bolívar, required as an element for the successful operations against the enemy, the damages suffered and done by the revolutionists as a consequence of such seizure, gives to the American Electric and Manufacturing Company the right to a just compensation for the damages suffered on account of the Government's action.

The claimant company, exhibiting evidence of witnesses, pretends that the damages caused amount to the sum of $4,000, but it must be taken into consideration that the witnesses and the company itself refer to all the damages suffered by the telephonic enterprise from the commencement of the battle which began on the 23d of May, whilst the seizure of the telephonic line by the Government which is the motive justifying the recognition of the damages, only took place on the 26th, which reduces in a notable manner the amount for damages which has to be paid by the Government and therefore the damage is held to be estimated in the sum of $2,000.

With reference to the second section of the claim for the sum of $2,000 for damages suffered by the telephonic company during the bombardment of Ciudad Bolívar in August, 1902, these being the incidental and necessary consequences of a legitimate act of war on the part of the Government's men-of-war, it is therefore disallowed.

No interest is allowed for the reason that the claim was never officially presented to the Venezuelan Government.

In consequence thereof an award is made in favor of the American Electric and Manufacturing Company for its claim against the Venezuelan Government in the sum of $2,000 American gold.

LASRY CASE.

Under the interpretation of the protocol the Commission not limited in adjudication of claims to such evidence only as may be competent under technical rules of common law. Evidence taken under sanction of an oath administered by competent authority will be accorded greater weight than unsworn statements, informal declarations, etc.[a]

BAINBRIDGE, *Commissioner* (for the Commission):

This claim is submitted upon the following documents:

First. Two letters of claimant, both dated May 16, 1901, addressed to the Department of State, in which he sets forth that he is a naturalized citizen of the United States, domiciled in Venezuela; that on November 11, 1899, the troops of General Colmenares, a detachment of General Castro's army, entered Belen, where claimant resided and was engaged in business as a merchant and farmer, took away his cattle and horses, and looted the better part of the goods and provisions in his business establishment; and he summarizes his alleged losses as follows:

	Gold.
29 head of cattle, at $20 per head	$580
Merchandise	15,000
2 saddle horses, at $125 each	250
Cash	50
Total	15,880

Second. A statement signed by various parties claiming to be residents of Belen before the jefe civil of the parish to the effect that on the 11th day of November, 1899, the cattle Mr. Lasry had in his pasture were taken by the forces of General Colmenares and that the better part of the goods stored in his establishment was looted by said forces; and furthermore that Mr. Lasry had always attended to his business without mixing himself in the politics of the country, or in anything else which could affect his condition as a neutral tradesman.

Third. A statement signed on October 3, 1901, by J. Benody and J. A. Parmente in the presence of the secretary of the United States legation at Caracas to the effect that Isaac J. Lasry was, during the revolution existing in Venezuela in November, 1899, practically ruined by the sackage of his mercantile house established at Belen, a village in the State of Carabobo, and the confiscation of all his material goods—such as money, beasts, cattle—by the forces of the Government of Venezuela.

Fourth. Copy of certificate of naturalization of Isaac J. Lasry in the court of common pleas for the city and county of New York, on October 26, 1893; and copy of passport issued to Isaac J. Lasry on March 22, 1898, by the United States legation at Caracas.

It is to be observed that no legally competent evidence under the rules of municipal law is here presented, either as to the fact or amount of the alleged loss. The learned counsel for Venezuela urges that the facts upon which the claim is founded are not proved as the common law requires, and that it should therefore be disallowed.

Article II of the protocol constituting this Commission provides:

The commissioners, or umpire, as the case may be, shall investigate and decide said claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments.

---

[a] See Faber case, p. 600, and note.

The Commission, then, is not limited in the adjudication of the claims submitted to it to only such evidence as may be competent under the technical rules of the common law, but may also investigate and decide claims upon information furnished by or on behalf of the respective Governments. It has indeed been found impossible in proceedings of this character to adhere to strict judicial rules of evidence. Legal testimony presented under the sanction of an oath administered by competent authority will undoubtedly be accorded greater weight than unsworn statements contained in letters, informal declarations, etc., but the latter are under the protocol entitled to admission and such consideration as they may seem to deserve.

The information furnished as to this particular claim is both meager and unsatisfactory. The statement of the claimant that he suffered some loss, and the manner thereof is corroborated by the declarations of various residents of Belen, but none of the latter gives an estimate of the amount of the loss sustained by Mr. Lasry. Belen is referred to by the declarants as a little town or village in the State of Carabobo. Lasry states that "the better part" of his stock of merchandise was taken by the soldiery, and he gives the value of the part taken as $15,000 gold, manifestly an exaggeration.

The Commissioners regarding the fact as shown that Lasry sustained some loss, but unable to accept his uncorroborated estimate of the value of the property taken, have agreed to make an allowance in this claim of the sum of $2,000, without interest, as being under all the circumstances the nearest approach possible to an equitable determination.

FLUTIE CASES.

Recitations in the record of naturalization proceedings are binding only upon parties to the proceedings and their privies. The Government of the United States and that of Venezuela are not parties, and such recitations are not conclusive upon either of these governments.

International tribunals competent to decide their own jurisdiction.

Certificate of naturalization an element of proof subject to be examined according to the principle of locus regit actum. Certificates of naturalization made in due form presumed to be true, but when it becomes evident that statements therein contained are incorrect this presumption must yield to the truth.

Certificate of naturalization decided to have been granted by fraud or mistake because evidence showed that claimant did not "reside" in the United States for the statutory period immediately preceding issuance of such certificate, and claim dismissed without prejudice.

BAINBRIDGE, *Commissioner* (for the Commission):

For reasons hereinafter made apparent, it is deemed advisable to consider these two claims together.

The memorial of Elias Assad Flutie, subscribed and sworn to on March 7, 1903, before William J. Marshall, a notary public in and for the county of Middlesex, State of Massachusetts, states:

1. That the said Elias A. Flutie is a native of Syria, 27 years of age; that he came to the United States in the year 1892, and was naturalized a citizen of the United States on the 2d day of July in the year 1900, in the district court of the United States of America for the eastern district of New York, sitting in the city of Brooklyn, in proof whereof said claimant produces with his memorial a certified

copy of said certificate of naturalization, marked "Exhibit A," and that claimant is now a citizen of the United States, and a resident of the city of Wilkesbarre, State of Pennsylvania.'

2. That about the year 1899 claimant went temporarily to the city of Yrapa, in the Republic of Venezuela, to establish a business as a general merchant, returning shortly afterwards to the United States, leaving said business in charge of his brothers; that said business was conducted for the period of one year without interruption, resulting in a large profit to the claimant; that claimant returned to Venezuela from time to time to supervise the conduct of said business; that he was at all times the sole person interested in said business; that his stock in trade was worth about $30,000; that all of claimant's books of account and records of what stock he had were destroyed, but that he is able to state from memory what amount of stock there was on hand and he attaches an inventory thereof marked "Exhibit B;" that he employed as clerks to assist him in said business his two brothers, Julian and Abraham Flutie, and also two other persons named Victor Ferralle and José R. Romero.

3. That the claimant returned from the United States in August, 1900, and from that time claimed citizenship in the United States and the protection of the United States Government; that prior to his return to Venezuela, a revolution broke out in that Republic; that at various times after his return, between September, 1900, and March, 1902, he was the victim of forced loans, destruction of property, false arrests, and illtreatment in connection therewith, received partially at the hands of the Government officials and troops, and partially at the hands of the insurgents; that his store was raided on repeated occasions, he himself was repeatedly arrested and lodged in jail, and kept for indefinite periods, and released only upon his consenting to make the demanded forced loans, or when the officers of the Government had in the meantime obtained from his store such goods and money as they demanded. The memorial states seventeen specific instances of such alleged illegal acts on the part of the officers of the Government, and seven similar unlawful acts on the part of the revolutionists; that because of said acts of violence all of claimant's property to the value of $30,000 in United States gold was confiscated, lost, or destroyed; and that on June 7, 1901, the claimant, together with his wife and children, was forced to leave the country.

4. Claimant demands from the Government of Venezuela as a just recompense for the injuries he has suffered, for loss of property, the sum of $30,000, and for illtreatment the sum of $50,000; in all the sum of $80,000 in United States gold coin.

The memorial of Emilia Alsous Flutie, subscribed and sworn to on March 31, 1903, before Arthur L. Turner, a notary public in and for Luzerne County, State of Pennsylvania, states:

1. That the said Emilia Alsous Flutie is a native of Syria, 25 years of age; that in the city of Carúpano, in the Republic of Venezuela, on the 22d day of July, 1897, she was married to Elias Assad Flutie, according to the rites of the Roman Catholic Church, having previously, to wit, on the 25th of April, 1896, been married by the civil authorities of said Republic to said Elias A. Flutie; that her husband was naturalized a citizen of the United States of America on the 2d day of July, 1900, in the district court of the United States for the eastern district of New York, sitting in the city of Brooklyn; that a

duplicate of his certificate of naturalization is attached to her memorial marked "Exhibit A;" that by virtue of the naturalization of Elias Assad Flutie, as a citizen of the United States, claimant is a citizen thereof, and that she is now a resident of the city of Wilkesbarre, State of Pennsylvania.

2. That from the month of September, 1900, to the month of June, 1901, claimant was with her husband in the city of Yrapa, Venezuela; that apart from her husband's business and in her own name, for her own separate benefit, claimant used to carry on a small trade in toilet articles, etc.; that her stock in trade was worth $1,500; that claimant was unable to preserve any documents showing her actual stock, but is able to state from memory what amount of stock she had on hand, and attaches to her memorial an inventory thereof marked "Exhibit B" which sets forth the amount and cost value of the articles; and that she was the sole person interested in said business.

3. That during the year 1900 and 1901, there was a revolution in progress in Venezuela, in the course of which she was subjected, at various times, to such illtreatment, at the hands of both the Government officials and the insurgents, that she became ill; that as a result of such illtreatment her health has been permanently impaired; that toward the close of December, 1900, certain Government officials arrested and imprisoned claimant's husband, and in his enforced absence, said officials tried to criminally assault claimant, and were driven off by the claimant at the point of a pistol; that they took possession of all the goods which belonged to claimant, and after having destroyed some, took the remainder away with them, said property being of the value of $1,500 gold; and that on June 7th, the claimant, together with her husband and children, was forced to leave the country, sailing from Yrapa at night during a heavy tropical tempest in a small sailboat of about 5 tons burden, which afforded absolutely no shelter, and that after four days of such exposure they at length reached the island of Trinidad.

4. Claimant demands as a just recompense for her loss of property the sum of $1,500, and for the illtreatment she has suffered the sum of $20,000, in all the sum of $21,500 in United States gold coin.

The two claims aggregate the sum of $101,500 gold.

The only testimony introduced is that of the claimants themselves and of Abraham and Julian Flutie, brothers of Elias A. Flutie.

It appears from the evidence that the claimants were suspected by the Venezuelan authorities of unlawful traffic in fraud of the revenues, but the charges of smuggling are denied by the claimants and the arrests are alleged to have been without just foundation. It is a fact, not without significance, however, that although the alleged outrages extended over a period of nearly a year, the evidence does not show that during that time any notice of them was brought to the attention of the consular officers or diplomatic representative of the United States in Venezuela.

But, in view of the position taken by the Commission relative to these claims, a further discussion of their merits is unnecessary.

Article I of the protocol constituting this Commission confers jurisdiction over—

all claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration, between the two Governments.

This Commission has no jurisdiction over any claims other than those owned by citizens of the United States of America. The American citizenship of a claimant must be satisfactorily established as a primary requisite to the examination and decision of his claim. Hence the Commission, as the sole judge of its jurisdiction, must in each case determine for itself the question of such citizenship upon the evidence submitted in that behalf.

The citizenship of claimants is as fully a question of judicial determination for the Commission in respect to the relevancy and weight of the evidence and the rules of jurisprudence by which it is to be determined as any other question presented to this Tribunal, subject only to the provisions of Article II of the protocol that the commissioners, or umpire, as the case may be, shall investigate and decide claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments.

The jurisdiction of the Commission over both of these claims depends upon the American citizenship of Elias A. Flutie. The evidence of Flutie's citizenship in each case is a copy of the record of his naturalization on July 2, 1900, in the district court of the United States for the eastern district of New York. The record recites that Flutie had produced to the court such evidence and made such declaration and renunciation as are required by the naturalization laws of the United States, and that he was accordingly admitted to be a citizen thereof.

This certificate of naturalization, as the record of a judgment of a high court, is prima facie evidence that Elias A. Flutie is a citizen of the United States. It is not, however, conclusive upon the United States, or upon this Tribunal.

In the case of Moses Stern (13 Op. Atty. Gen., 376) the Attorney-General of the United States, Mr. Akerman, said:

> Recitations in the record (i. e., of naturalization) of matters of fact are binding only upon parties to the proceedings and their privies. The Government of the United States was no party, and stands in privity with no party to these proceedings. And it is not in the power of Mr. Stern, by erroneous recitations in ex parte proceedings, to conclude the Government as to matters of fact.

In the circular of Mr. Fish, Secretary of State, dated May 2, 1871, he says:

> It is material to observe that according to the opinion of the Attorney-General in the case above mentioned, the recitations contained in the record of naturalization, as to residence, etc., are not conclusive upon either this or a foreign Government; but that when such recitals are shown, by clear evidence, to be erroneous, they are to be disregarded. (Foreign Relations, 1871, p. 25.)

Such is still the position taken by the Department of State.

> As for the naturalization laws to which you allude, they are of direct concern to this Department only so far as they affect the international status of those who become naturalized. As you are aware, the Department's regulations require every naturalized citizen when he applies for a passport to make a sworn statement concerning his own or his parents' emigration, residence, and naturalization; and whenever the naturalization appears to have been improperly or improvidently granted, it is not recognized under the Department's rules. (Mr. Hay, Secretary of State, to Mr. Sampson, June 21, 1902. Foreign Relations, 1902, p. 389.)

The record of a judgment rendered in another State may be contradicted as to the facts necessary to give the court jurisdiction; and if it be shown that such facts did not exist, the record will be a nullity, notwithstanding it may recite that they did exist. (Thompson *v.* Whitman, 18 Wall. U. S., 457.)

In Pennywit *v.* Foote (27 Ohio St., 600), the court said that a judgment offered in evidence—

> may be contradicted as to the facts necessary to give the court jurisdiction, and if it be shown that such facts did not exist, the record will be a nullity, notwithstanding it may recite that they did exist, and this is true either as to the subject-matter or the person, or in proceedings in rem as to the thing.

The functions and authority of an international court of arbitration are clearly expressed by Mr. Evarts, Secretary of State, in a communication relative to the United States and Spanish Commission of 1871, which Mr. Evarts declared to be—

> an independent judicial tribunal possessed of all the powers and endowed with all the properties which should distinguish a court of high international jurisdiction, alike competent, in the jurisdiction conferred upon it, to bring under judgment the decisions of the local courts of both nations, and beyond the competence of either Government to interfere with, direct, or obstruct its deliberation. (Moore's Arbitrations, p. 2599.)

He says, furthermore, that the tribunal had authority—

> to fix, not only the general scope of evidence and argument it will entertain in the discussion both of the merits of each claim and of the claimant's American citizenship, but to pass upon every offer of evidence bearing upon either issue that may be made before it. (Moore's Arbitrations, p. 2600.)

In Medina's case, decided by the United States and Costa Rican Commission of 1860, Bertinatti, umpire, says:

> An act of naturalization, be it made by a judge ex parte in the exercise of his voluntario jurisdictio, or be it the result of a decree of a king bearing an administrative character; in either case its value, on the point of evidence, before an international commission, can only be that of an element of proof, subject to be examined according to the principle locus regit actum, both intrinsically and extrinsically, in order to be admitted or rejected according to the general principles in such a matter. * * *
> The certificates exhibited by them (the claimants) being made in due form, have for themselves the presumption of truth; but when it becomes evident that the statements therein contained are incorrect, the presumption of truth must yield to truth itself. (Moore's Arbitrations, 2587.)

Whatever may be the conclusive force of judgments of naturalization under the municipal laws of the country in which they are granted, international tribunals, such as this Commission, have claimed and exercised the right to determine for themselves the citizenship of claimants from all the facts presented.

(Medina's case, supra; Laurent's case, Moore's Arbitrations, 2671; Lizardi's case, ibid., 2589; Kuhnagel's case, ibid., 2647; Angarica's case, ibid., 2621; Criado's case, ibid., 2624.)

The present Commission is charged with the duty of examining and deciding all claims owned by citizens of the United States against the Republic of Venezuela. It is absolutely essential to its jurisdiction over any claim presented to it to determine at the outset the American citizenship of the claimant. And the fact of such citizenship, like any other fact must be proved to the satisfaction of the Commission or jurisdiction must be held wanting.

Notwithstanding the certificates of naturalization introduced in evidence here, the Commission is not satisfied that Elias Assad Flutie is a citizen of the United States, or that it has under the protocol any jurisdiction over these two claims.

Section 2170 of the Revised Statutes of the United States provides that:

> No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

This law is not construed to require the uninterrupted presence within the United States of the candidate for citizenship during the entire probationary period. Transient absence for pleasure or business with the intention of returning does not interrupt the statutory period or preclude a lawful naturalization at the expiration thereof. But the law does require the candidate to "reside" within the United States for the continued term of five years next preceding his admission.

No alien who is domiciled in a foreign country immediately prior to and at the time he applies to be admitted to citizenship can be lawfully naturalized a citizen of the United States.

Domicile is residence at a particular place accompanied with an intention to remain there; it is a residence accepted as a final abode. (Webster.) Domicile in Venezuela during a certain period precludes for the same period residence in the United States within the meaning and intent of the statutes of naturalization.

A man's domicile, as involving intent, is often difficult of ascertainment. But publicists and courts regard certain criteria as establishing the fact.

If a person goes to a country with the intention of setting up in business he acquires a domicile as soon as he establishes himself, because the conduct of a fixed business necessarily implies an intention to stay permanently. (Hall, Int. Law, 517.)

If a person places his wife and family and "household gods" * * * in a particular place, the presumption of the abandonment of a former domicile and of the acquisition of a new one is very strong. (4 Phillimore's Int. Law, 173.)

If a married man has his family fixed in one place and he does business in another, the former is considered the place of his domicile. (Story, Conflict of Laws, Ch. III, sec. 46.)

The residence of a man, says Judge Daly, is the place where he abides with his family, or abides himself, making it the chief seat of his affairs and interests. (Quoted in Medina's case, supra.)

The apparent or avowed intention of constant residence, not the manner of it, constitutes the domicile. (Guier *v.* O'Daniel, 1 Binney, 349.)

Intention may be shown more satisfactorily by acts than declarations. (Shelton *v.* Tiffin, 6 How. U. S., 163.)

These are the criteria of domicile, recognized by both international and municipal law. Concurrently existing in this case, they fix the domicile of Elias A. Flutie prior to and on July 2, 1900, in the Republic of Venezuela.

The evidence bearing upon the residence of Elias A. Flutie is the following:

Elias A. Flutie states that he is a native of Syria, 27 years of age (in 1903); that he came to the United States in 1892; that during the years 1899, 1900, and 1901, his occupation was that of a merchant and his residence was in the city of Brooklyn, in the State of New York, where he had resided for several years past; that about the year 1899 he went temporarily to the city of Yrapa in Venezuela to establish a business as a general merchant, returning shortly afterwards to the United States, leaving said business in charge of his brothers; that he had temporarily left his family in Yrapa in charge of his brothers, and visited them from time to time for a greater or less period; that he made frequent trips to Yrapa to supervise the management of his business, returning each time to his home in Brooklyn; that he was naturalized a citizen of the United States on July 2, 1900; that in August, 1900, he returned to Venezuela where he remained until compelled to flee from the country in June, 1901.

In Flutie's testimony there is no intimation that he was ever in Venezuela prior to "about 1899," when he went there "temporarily" to establish the business at Yrapa, where he "temporarily" left his family whom he visited from time to time "for a greater or less period." Indefiniteness, evasion, a manifest shaping of his statements to accord with the supposed necessities of his case, and a suppression of material facts characterize all his testimony on the subject of his residence and discredit it.

Emilia Alsous Flutie testifies (on March 25, 1903), that she had known Elias A. Flutie for seven and one-half years. Her acquaintance with him must have begun therefore about September, 1895. She swears that she was married to him by the civil authorities of Venezuela on the 25th day of April, 1896, and that she was married to him again, according to the rites of the Roman Catholic Church, on July 22, 1897, at Carúpano, Venezuela; that during part of the year 1899 she resided at Carúpano, Venezuela, going from Carúpano to Yrapa, Venezuela, in the latter part of that year, where she resided until June, 1901; that in both Carúpano and Yrapa she was engaged in the sale of laces, fancy needlework, and fancy goods.

Abraham A. Flutie testifies that he has known Mrs. Emilia Flutie since July, 1897, when she was married to his brother by Father Pedro Ramos, and that the business at Yrapa was established in July or August, 1899.

Julian A. Flutie testifies that the business at Yrapa was conducted under the name of Flutie Hermanos, although it belonged entirely to Elias A. Flutie; that he first met Mrs. Emilia Flutie on the 8th of July, 1897, when he was introduced to her by his brother Elias, who told him that he had been civilly married to her on April 25, 1896; that on July 22, 1897, his brother was married to her according to the rites of the Roman Catholic Church at Carúpano, Venezuela; that he was best man at the wedding, and the ceremony was performed by Rev. Antonio Ramos. He says that in June, 1901, Mrs. Flutie became so frightened, both for her own safety and that of her children, that she was forced to leave the country.

As it does not appear in evidence that Mrs. Flutie was ever in the United States until she went there with her husband in 1901, it is apparent that Elias A. Flutie must have left the United States as early as September, 1895; it is proven that he was married in Venezuela in April, 1896, and remarried there in July, 1897, and by his own statement he was established in business there in 1899.

Flutie claims that for several years prior to July 2, 1900, he resided in the United States, and that subsequent to about 1899 he made frequent trips to Venezuela to visit his family for greater or less periods and to supervise the management of his business, returning each time to his home in Brooklyn.

The Commission is satisfied from all the evidence before it in these cases that the reverse is true; that Flutie resided in Venezuela from at least the fall of 1895 up to July or August, 1899, at or near Carúpano, and after that time at Yrapa; that he may have made trips to the United States, and undoubedly did make one there shortly before July 2, 1900, returning to his home and family and business in Venezuela shortly afterwards, that is to say, in August, 1900; from which time there is neither allegation nor proof in the record nor any fair implication therefrom that he ever intended voluntarily to return to the United States.

Naturalization in the United States, without any intent to reside permanently therein, but with a view of residing in another country, and using such naturalization to evade duties and responsibilities to which without it, he would be subject, ought to be treated by this Government as fraudulent. (14 Op. Atty. Gen., 295; Wharton, Int. Law Dig., sec. 175.)

The evidence presented in these cases convinces the Commission that Elias A. Flutie did not "reside" in the United States for the continued term of five years nor any considerable portion thereof prior to the 2d day of July, 1900; that the facts necessary to give the court jurisdiction did not exist, and therefore that the certificate of naturalization was improperly granted.

It follows that these claimants have no standing before the Commission as citizens of the United States, and their claims are therefore dismissed for want of jurisdiction, without prejudice, however, to their presentation in a proper forum.

UNDERHILL CASES.

(By the Umpire:)

Claim of J. L. Underhill, as successor in interest of her deceased husband, G. E. Underhill, disallowed because of failure on her part to show succession in interest.

Damages allowed for unlawful detention of claimant, J. L. Underhill, in Venezuela by the governmental authorities refusing to furnish passport.

BAINBRIDGE, *Commissioner* (claim referred to umpire):

I am unable to agree with my honorable colleague in regard to this claim.

At the time of the alleged transfer of the waterworks, Underhill was not, in my judgment, enjoying that freedom from restraint and equality of position as a contracting party which are necessary to give validity to every contract. Furthermore it appears to me that Mrs. Underhill is entitled in propria persona to an award for her unlawful detention.

As this claim must go to the umpire, however, it is unnessary to discuss in detail the evidence upon which the foregoing opinion is based.

PAÚL, *Commissioner* (claim referred to umpire):

Both of these cases represent a claim for an indemnity amounting to $232,316.28 for personal injuries, insults, abuses, and unjust imprisonment. The claim of George Freeman Underhill includes an indemnity for having been forced to sacrifice, or abandon, his property; having been obliged to leave the place of his residence.

George Freeman Underhill died in the city of Havana, Cuba, on the 26th of October, 1901, and his widow, Jennie Laura Underhill, presented on the 17th of June of this year, to the Department of State in Washington, a supplementary memorial as administratrix of the estate of her deceased husband, although it is not proven that she had obtained from the surrogate's court of the county of New York, State of New York, the appointment to said charge.

Underhill's death put an end to any claim that could arise from personal injuries, insults, or other offenses, because these facts require, to serve as a reason for an indemnity, to be preceded by the consequential trial for responsibility against the perpetrator of said offense,

and Underhill, as it is proven, limited himself, in his lifetime, to entering an action of responsibility against Gen. José Manuel Hernandez, in the city of New York, and both the circuit court and the Supreme Court of the United States, decided that General Hernandez's acts were not of such nature as to be properly brought within the jurisdiction of the United States courts. This last judgment of the Supreme Court took place seven years before Underhill's death, and during all those years he never tried to enter before the Venezuelan courts any action of responsibility for the alleged personal offenses, all rights of civil action thus perishing with his own death.

Besides these considerations, it appears, as evidently proven that Underhill never was subjected to any personal illtreatment, nor to any imprisonment from the moment of the taking of the city of Bolívar by General Hernandez, as chief of the revolutionary forces called "Legalista," until Underhill's departure for Trinidad. The facts mentioned by Underhill in his memorial addressed to the Department of State, and which facts took place on the 11th of August, 1892, in reference to his wife and himself, only prove that there existed an excited feeling of the people of Ciudad Bolívar who tried to prevent the sailing of the Underhills, husband and wife, on the steamer *El Callao*, with the chiefs of the party vanquished at the battle of Buena Vista on the previous day, and while there was not in the city any regularly established authority.

It is not true, as it is asserted by the memorialist, that in consequence of said happenings, he was put in prison with his wife, as from his own statement and those of the witnesses produced by him, it appears that from the wharf the Underhills, husband and wife, went to their hotel, and stayed in it until their departure from Ciudad Bolívar.

The report made by the commander of the U. S. man-of-war *Kearsarge*, Mr. A. T. Crowninshield, and addressed to Rear-Admiral J. G. Walker, dated at Trinidad on the 18th of November 1892, after having obtained from the United States consul at Ciudad Bolívar and from other respectable gentlemen of the same city, all named by the commander in his report, all the necessary information to arrive at the truth of what had occurred at Ciudad Bolívar to the Underhills, very clearly says that far from having the Underhills suffered any humiliating treatment of any kind from General Hernandez they were, on the contrary, protected by him from the feeling of general hostility existing against Underhill amongst all classes and all citizens of Ciudad Bolívar, according to the very words of the commander of the *Kearsarge*.

This feeling was strengthened by the knowledge that Mr. Underhill had entertained at his residence General Carreras and other officers of the Government's army the day before their departure from Ciudad Bolívar, when they went out to meet the revolutionary forces, which were approaching the city under the command of General Hernandez; [and further] I could not find any evidence to support the statement of Mr. Underhill that he was confined in his own house by orders of the new Government; or that guards were placed about his residence, as he states, for several weeks.

From August 11 to September 23, Mr. Underhill made repeated applications to General Hernandez to leave Ciudad Bolívar by every steamer, but permission was invariably refused; first, on the ground that it would be unsafe for Mr. Underhill to leave on one of Mr. Mathison's steamers; second, that the presence of Mr. Underhill was necessary in order to operate the aqueduct. A passport was, however, offered to Mr. Underhill, provided he would obtain some reliable merchant in Ciudad Bolívar to give security for his return, but this proposition Mr. Underhill declined.

It must be noticed that no mention is made in this report of the commander of the *Kearsarge* of the complaints that, later on, Mrs. Underhill has pretended to adduce, in reference to herself, for illtreatment and unjust imprisonment, as a ground to claim the sum of $100,000; but it does appear as proven that General Hernandez did offer to said lady a passport for Trinidad, which was delivered on September 27, and she embarked on board the steamer *Bolívar* on the 2d of October, next.

In regard to the claim of Mr. Underhill for an indemnity for having been forced to sell his rights of exploitation of the aqueduct of Ciudad Bolívar, having to leave the city, it will be sufficient to read the contents of his letter of September 24, 1892, addressed by said Underhill to Gen. J. M. Hernandez, in answer to his official note, No. 278, in regard to the importance given by that civil and military chief of the city, to the work of putting in activity the service of the aqueduct, to maintain the supply of water to the city, in accordance with the contract entered into by Underhill with the Government. In said letter are found the following expressions:

> On the 14th of July, when I was obliged to cease pumping, it was my intention to start up again as soon as the works had become dry. But since the occurrence of the 11th of August, and the insults I have received, and your refusal to give me a passport on any steamer that has sailed from this port during the term of six weeks, I have come to the following decisive conclusion pertaining to the aqueduct: I shall never run the aqueduct for the city of Bolívar again.
>
> I left the works in perfect order on the 14th day of July, and so they can be found to-day, unless made otherwise by malicious hands.
>
> If it is your right to take possession of that business, you must know and can act accordingly. All buildings outside of the pump house are my private property. My stock and tools contained in the office building are also my private property.

A few days after the date of this letter, on the 18th of October of the same year, Underhill celebrated a contract of sale, in favor of Mr. R. Tomassi, yielding to this latter all his rights in the aqueduct of Ciudad Bolívar for the sum of 6,500 pesos, which he received in cash; this contract of sale appears as made of his own and free will.

It is to be noted, as an appreciation of the character of those facts, the final part of the judgment of the Supreme Court of the United States in the suit brought by Underhill against General Hernandez:

> We agree with the circuit court of appeals that the evidence upon the trial indicated that the purpose of the defendant in his treatment of the plaintiff was to coerce the plaintiff to operate his waterworks for the benefit of the community and revolutionary forces, and that it was not sufficient to have warranted a finding by the jury that the defendant was actuated by malice or any personal or private motive, and we concur in its disposition of the ruling below. The decree of the circuit court is affirmed. [a]

For the above reasons I am of the opinion that the claim of the widow Underhill, per se, and as administratrix of the estate of her deceased husband, should be entirely rejected.

GEORGE F. UNDERHILL CASE.

BARGE, *Umpire:*

A difference of opinion having arisen between the Commissioners of the United States of North America and the Republic of Venezuela, this case was duly referred to the umpire.

The umpire having fully taken into consideration the protocol as well as the documents, evidence, and arguments, and likewise all the

---

[a] 168 U. S., 250.

communications made by the two parties, and having impartially and carefully examined the same, has arrived at the following decision:

Whereas in this case there are presented to the Commission two separate claims: One of George Freeman Underhill for an indemnity for personal injuries, insults, abuses, and unjust imprisonment as well as for forced sacrifice of a property, and one of Jennie Laura Underhill for damages for detention, these claims have to be examined separately, and may be separately decided upon.

The claim of George Freeman Underhill arises out of facts and transactions which took place in the months of August, September, and October, 1892;

Now, whereas Underhill died on the 26th day of October, 1901; and

Whereas, the first ingredient necessary to make a claim is a claimant, it has to be considered by whom this place as a claimant is now legally filled; and

Whereas, whatever may be the law or the opinion as to the transition of the right to claims that arise from personal injuries, insults or other offences, it has at all events to be stated in these cases as well as in cases of claims for financial damages to whom this right to claim was legally transferred by the claimant's death;

Whereas further in this case the only person who claims this right is Jennie Laura Underhill, the deceased's widow; and

Whereas Jennie Laura Underhill declares that she is entitled to administer upon her late husband's estate, but

Whereas no proof whatever of this statement is to be found in the documents laid before the Commission;

Whereas, on the contrary, she stated on the 17th of June, 1903, that she on that day only "was about to make application to the surrogate's court of the county of New York, State of New York, for letters of administration thereon," whilst up to this day (October, 1903) no evidence as to the result of this application has reached the Commission; and

Whereas it does not appear whether claimant at his death left a last will or not; whereas, at all events, nothing about the contents of such a last will, if existing, is known to the Commission; and

Whereas it is merely stated in the exhibit that Underhill married in 1886, and that in that year his wife went with him to Ciudad Bolívar, but not where they married or under which law or on what conditions, the Commission has no opportunity to investigate and testify which right might result for Underhill's widow out of the fact of this previous marriage; whilst out of the declaration sworn to by Jennie Laura Underhill on the 22d of November, 1898, that at that date and at the time of its origin, the entire amount of her claim belonged solely and absolutely to her, it seems to appear that during the marriage there was no community of financial interests whatever established by law or by acts between Underhill (now deceased) and his (then) wife, Jennie Laura Underhill.

Whereas, therefore, no evidence exists for the rights of Jennie Laura Underhill to appear as a claimant in the place of her deceased husband; and

Whereas, as it was said before, no one else claims this right before the Commission, the claims of George Freeman Underhill have to be dismissed for want of a claimant.

JENNIE L. UNDERHILL CASE.

BARGE, *Umpire:*

A difference of opinion having arisen between the Commissioners of the United States of America and the United States of Venezuela, this case was duly referred to the umpire.

The umpire having taken fully into consideration the protocol and also the documents, evidence, and arguments, and likewise all the communications made by the parties, and having impartially and carefully examined the same, has arrived at the following decision:

Whereas Jennie Laura Underhill on or about the 23d day of November, 1898, filed with the Department of State of the United States of America a memorial whereby she claimed damages against the Government of the United States of Venezuela in the sum of $100,000 for facts that had occurred in 1892, which claim, however, was never presented by the Department of State of the United States of America to the foreign office of the United States of Venezuela; and

Whereas this claim was presented to this Commission by the honorable agent of the United States of America on June 16, 1903; and

Whereas the honorable agent of the United States of Venezuela opposed this claim in his answer dated July 9, 1903;

Whereas at the 16th of July, 1903, a brief prepared by the attorneys of the claimant was submitted by the honorable agent of the United States of America "in replication," as he says, "to the answer of the Venezuelan Government in the above-entitled case, thus making this brief the replication of the United States of America to the answer of the United States of Venezuela;

Whereas, further on, claimant says in her claim filed at the State Department: "I claim for assault, insult, abuse, and imprisonment;" and

Whereas the honorable agent of the United States of America, in the first brief, stated that the claim was for damages for personal injuries, insults, abuse, and false imprisonment.

But whereas the brief of attorneys, that has to be regarded as the replication of the United States of America after the answer of the United States of Venezuela was given, formally states that the claim arises out of unlawful arrest and imprisonment, and afterwards repeats, "Her claim is entirely for damages for detention of her person," it is shown that, after the replication, the claim has to be looked upon as a claim for unlawful arrest and detention (which opinion seems to be enforced by the opinion of the honorable Commissioner of the United States of America, when stating his inability to agree with the honorable commissioner for the United States of Venezuela, he declares that it appears to him that Mrs. Underhill "is entitled to an award for her unlawful detention"); and

Whereas perhaps practically the admitting of the other causes named in the claim and in the first brief would be of no great influence, as the evidence shows that, whatever may or might have been proved to have happened to claimant's husband, George Underhill, there is no proof of any assault, insult, or abuse as regards Jennie Laura Underhill, except what happened in the morning of the 11th of August, 1892, when an irritable and exasperated ungoverned mob—which believed the Underhills to be partial to the very unpopular party with whose chiefs and officials they were on the point to escape from the

city, which conviction was not without appearance of reason, fostered by the fact that the Underhills entertained the commanding general and chiefs of that party on their departure to fight the then popular party called "Legalista"—prevented her leaving the city and assaulted, insulted, and abused her, for which assault, insult, and abuse of an exasperated mob in a riot, the Government—even when admitting that on that morning there was a de facto government in Ciudad Bolívar (quod non)—can not be held responsible, as neither according to international, national, civil, nor whatever law else anyone can be liable for damages where there is no fault by unlawful acts, omission, or negligence; whilst in regard to the events of the morning of August 11, 1892, there is no proof of unlawful acts, omission, or negligence on the part of what then might be regarded as local authority, which was neither the cause of the outrageous acts of the infuriated mob nor in these extraordinary circumstances could have prevented or suppressed them); still, equity to the contending parties seems to require that, after the replication of the honorable agent of the United States of America, unlawful arrest and detention be looked upon as the acknowledged cause of this claim.

Now whereas in investigating the evidence laid before the Commission in this claim, it has to be remembered that, if it be true, what the honorable agent of the United States of America remarked about the deposition of General Hernandez (chief of the government in Ciudad Bolívar after 16th of August, 1892), viz, that this gentleman, notwithstanding his honor, integrity, and high position, had been so intimately connected with the acts out of which this claim arises, that he could scarcely be expected to be able to make an unbiased statement in regard to it, at least the same reflection must be borne in mind respecting the memorials and depositions of Jennie Laura Underhil and her husband, which form the main part of the evidence; and

Whereas, according to the brief of the attorney's, the claim arises out of unlawful arrest and imprisonment from August 11, 1892, to September 27 of that same year; and

Whereas the evidence shows, that on the 11th day of August, although the mob shouted: "to the carcel with the Underhills," the Underhills were not arrested and brought to the carcel, but fled in the Union Hotel, where the mob did not follow them, but where a guard was placed before the door, whilst the evidence does not show whether this guard was placed there to protect the Underhills by preventing the mob to enter the hotel, or to prevent Mr. Underhill from leaving the house;

Whereas, further on, Mrs. Underhill herself declares that in the afternoon of that same day: "she hastened from the hotel (where she just before declared herself to be imprisoned) went to the prefect's office, and afterwards, together with her husband, left that place and returned—not to the hotel, where she declared she was imprisoned—but to her home; and

Whereas, as evidence shows, claimant declared before the United States circuit court, eastern district of New York, that on the 26th of September "she went to General Henandez in person, to his house;" that afterwards "she went to the Government building and saw Hernandez there;"

Whereas, therefore, no evidence is to be found of claimant being arrested and imprisoned; but on the contrary her own declarations

rather show that there scarcely can be question of imprisonment whilst she could leave the hotel and leave the house.

The investigation of the evidence laid before the Commission compels it to come, in regard to claimant, to the same conclusion as that to which it arrived in regard to her husband.

The Commander, Crowninshield, of the United States Navy (after investigating the case on the place itself and almost immediately after the facts occurred, and after hearing the prominent citizens of Ciudad Bolívar by him enumerated—for the most part foreigners) that no evidence of imprisonment could be found;

Wherefore the charge against the Government of Venezuela of claimant's unlawful arrest and imprisonment must be rejected.

But as, furthermore, claimant claims award for damages on the charge of detention of her person;

And whereas, without any arrest and imprisonment, detention takes place when a person is prevented from leaving a certain place, be it a house, town, province, country, or whatever else determined upon; and

Whereas it is shown in the evidence that claimant wished to leave the country, which she could not do without a passport being delivered to her by the Venezuelan authorities; and that from August 14 till September 27 such a passport was refused to her by General Hernandez, then chief of the Government of Ciudad Bolívar, the fact that claimant was detained by the Venezuelan authorities seems proved; and

Whereas, whatever reason may or might have been proved to exist for refusing a passport to claimant's husband, no reason was proved to exist to withhold this passport from claimant; and

Whereas the alleged reason that it would not be safe for the Underhills to leave on one of Mr. Mathison's steamers can not be said to be a legal reason, for if it be true that there existed any danger at that time, a warning from the Government would have been praiseworthy and sufficient. But this danger could not give the Government a right to prevent Mrs. Underhill from freely moving out of the country if she wished to risk the danger; whilst on the other hand it might have been said that the steamer being a public means of transfer, it would have been the duty of the Government to protect the passengers from such danger on the steamers when existing.

Whereas, therefore, it is shown that Mrs. Underhill was unjustly prevented by Venezuelan authorities from leaving the country during about a month and a half, the claim for unlawful detention has to be recognized.

And whereas for this detention the sum of $2,000 a month—making $3,000 for a month and a half—seems a fair award, this sum is hereby granted.

TURINI CASE.

(By the Umpire:)

Damages allowed successors in interest of a contractor who, although contract was violated by both parties, before any renunciation of the contract by the Government of Venezuela, performed certain work in pursuance thereof.

BAINBRIDGE, *Commissioner* (claim referred to umpire):

On July 28, 1896, a contract was executed between the secretary of public works of the United States of Venezuela, fully authorized by the President of the Republic, and Giovanni Turini, sculptor, resid-

ing in New York City and a naturalized citizen of the United States, whereby it was agreed:

1. On the part of Giovanni Turini that he would execute for the Government of Venezuela three statues, one equestrian of Gen. José Antonio Páez, another of Liberty, and a third of Bolívar, the latter destined to be presented by the Government of Venezuela to the city of New York; that he would deliver the statues of Páez and Liberty on board ship at the port of New York two months before the day set for the inauguration of the same, being for the first statue April 2, 1897, and for the second July 5, 1897; that these two monuments would be made in conformity with the Executive decrees of July 3 and 4, 1896, in reference thereto, and also in conformity with the sketches of said statues delivered by Turini to the secretary of public works; that the equestrian statue of Bolívar would be a replica or copy of the statue of Bolívar erected in the Plaza Bolívar in Caracas, with one change, that the dimensions of the one to be built should be one-fourth larger than natural size; that the materials for the pedestal as well as the statue would be of the same kind as those used for the aforesaid monument, which was to serve as a model; that Turini would deliver the statue of Bolívar to the representative of Venezuela at New York, would engrave on the pedestal such inscription as the Government of Venezuela might suggest to him, and would place such statue in New York at the spot to be designated.

2. On the part of the Government of Venezuela that it would pay Turini for the execution of the three statues the sum of $43,000 gold or 227,900 bolivars, in seventeen monthly payments of $2,300 or 12,190 bolivars per month, besides one monthly payment of $3,900 or 20,670 bolivars; that the first monthly payment would be made August 1, 1896, and that it would pay the freight and expenses of erection of the statues of Páez and Liberty.

It was further ageed that at the time of shipment of the statues of Páez and Liberty, the Venezuelan consul at New York must certify that they had been properly executed, were in good condition, and well packed.

Pursuant to this contract—

1. Turini executed the statue of General Páez, together with the pedestal; performed considerable direct work upon the statue of Liberty and that of Bolívar, the models of both being completed ready to be cast in bronze; and completed the pedestal for the statue of Liberty.

2. The Government of Venezuela paid to Turini altogether the sum of $8,130, the last payment being made in April, 1897, in the sum of $1,850.

By the terms of the contract the Government of Venezuela was to pay seventeen monthly installments of $2,300, beginning August 1, 1896, besides one monthly payment of $3,900. The contract was broken by Venezuela within four months from August 1, 1896, by its failure to make the stipulated payments. Nevertheless, Turini proceeded with the work and appears to have accepted the payment of $1,850 made in April, 1897. But any failure of Turini to complete and deliver the statues at the time specified in the contract was clearly due to the prior failure of the Venezuelan Government to make the monthly payments as provided therein. This provision in the contract may have been and probably was the very reason why Turini agreed to complete and deliver the statues within the times specified.

In 1898 the Venezuelan Government claimed that it could not and

would not accept the statue of Bolívar because the National Society of Sculpture of New York declared the statue to be without artistic merit; and also that fearing the statue of General Páez might be lacking the "necessary artistic requisites," it should be submitted to the judgment of a jury of artists, without the award of which the Government could not take into consideration Mr. Turini's claim.

But Turini did not agree to execute for Venezuela a statue of Bolívar which would be acceptable to the National Society of Sculpture of New York; nor did he agree to execute a statue of General Páez, subject to the judgment of a jury of artists. He agreed to execute statues of Páez and of Liberty, in conformity with the Executive decrees of July 3 and 4, 1896, in reference thereto, and in conformity with the sketches of said statues delivered by him to the secretary of public works. He agreed to execute a statue of Bolívar which would be a replica or copy of the one in the Plaza Bolívar in Caracas, the dimensions, however, to be one-fourth larger than natural size.

It is not claimed that Turini's work does not comply as to artistic merit with his agreement; but it is sought to measure it by standards other than those expressed in the contract. If the Venezuelan Government desired work done acceptable to the National Society of Sculpture of New York, or subject to the approval of a jury of artists, it should have so stipulated. Nor can it be assumed that Mr. Turini would have agreed to do such work at the price designated in the instrument before us.

The duty of the Commission is to determine the rights and obligations of the parties under the contract as it is—not as it might have been. And the true measure of damages in a case like this, where one engaged in the performance of a contract is prevented by the employer from completing it, is the difference between the price agreed to be paid for the work and what it would have cost the party employed to complete it, deducting, of course, the amount already paid.

Here the price agreed to be paid is the sum of $43,000, of which $8,130 have been paid. The evidence shows that it will cost about the sum of $11,000 to complete the work. The difference is the sum of $23,870. Interest should be allowed on this sum at the rate of 3 per cent per annum from January 1, 1898, to December 31, 1903, the anticipated date of the final award by this Commission.

The estate of Giovanni Turini is therefore entitled to an award in the sum of $28,166.60 gold.

Giovanni Turini died August 27, 1899, and thereafter on September 9, 1899, letters of administration of his estate were duly granted to his widow, Margaret Turini, by the surrogate of the county of New York.

At the time of Turini's death his estate was and still is liable for the following debts which were incurred by him in carrying out his contract with the Government of Venezuela:

(1) To the Gorham Manufacturing Company the sum of $6,319, with interest thereon at 6 per cent per annum from July 1, 1897.

(2) To Joseph Carabelli, the sum of $3,095, with interest thereon at 6 per cent per annum from October 22, 1898.

(3) To the Lyons Granite Company, the sum of $2,358.45, with interest at 6 per cent per annum from October 1, 1898.

The above-named parties, as intervenors in this claim, should be protected to the extent of their proportionate interests, in the distribution, of the award herein made to the estate of Giovanni Turini, deceased.

PAÚL, *Commissioner* (claim referred to umpire):

This claim is presented by the Government of the United States on behalf of the administratrix and heirs at law of Giovanni Turini, deceased; the Gorham Manufacturing Company and Joseph Carabelli, jointly interested, for breach of a written contract. The amount of the claim is $28,579.55, interest included.

Giovanni Turini, now deceased, was a naturalized citizen of the United States. The Gorham Manufacturing Company is a corporation existing under the laws of the State of Rhode Island, and a citizen of the United States; and Joseph Carabelli is a naturalized citizen of the United States.

The claim arises out of the following facts:

On July 28, 1896, an agreement was made between the secretary of public works of the United States of Venezuela, fully authorized by the President of the Republic and Giovanni Turini, sculptor, residing in the city of New York, represented by Messrs. J. Boccardo & Co., for the execution of three statues: One equestrian of Gen. José Antonio Páez; another one of "Liberty," both to be erected in the city of Caracas; and a third one of General Bolívar, destined to be presented to the city of New York by the Venezuelan Government.

Turini bound himself to execute the aforesaid statues for the amount of $43,000 gold, payable by the Government of Venezuela, at the city of Caracas, to whomsoever should be authorized to represent Turini, in seventeen monthly payments of $2,300 per month, and one monthly payment besides, of $3,900; the first monthly payment to be made at the office of Messrs. J. Boccardo & Co., on the 1st day of August, 1896.

Turini also bound himself to deliver the statues of Páez and of Liberty, on board ship, at the port of New York, two months before the day set for the inauguration of the same, being for the first statue the 2d day of April, 1897, and for the second the 5th day of July, 1897. These monuments had to be made in conformity with the decrees of the Executive of the 3d and 4th days of July of the same year, 1896, in reference to the same, and also in conformity with the sketches of said statues delivered by Turini to the secretary of public works. The statue of Bolívar was to be a replica, or copy of the one erected in the Plaza Bolívar at Caracas, with one change, to wit, that it should be one-fourth larger than natural size. The material for the pedestal as well as for the statue to be of the same kind as those used for the aforesaid monument, which would serve as a model.

It was also agreed that at the time of the shipment of the two monuments, destined to Caracas, the Venezuelan consul at New York had to certify that the same had been properly executed and were in good condition and well packed.

The memorial of Turini shows that pursuant to said contract he executed the statue of General Páez, together with its pedestal, and the same had been ready for delivery many months. He also states that he performed considerable direct work upon the statue of Liberty and on the statue of General Bolívar; the models of both statues being completed and ready to be cast in bronze; and that the pedestal for the statue of Liberty was also completed, but by reason of the nonpayment of the moneys, as stipulated in the contract, further work on these statues was suspended.

Turini acknowledges that he had received from the Government of

Venezuela the sum of $8,130 gold on account of his contract, the last payment having been made in April, 1897, by General Crespo (then president), and being the sum of $1,850. Under the contract Turini should have received, in April, 1897, the sum of $20,700.

In the execution of the contract Turini incurred a liability to the Gorham Manufacturing Company, and the memorialists affirm that they had received from him an assignment to the extent of $9,000 of the payments due him under the contract, with power to collect same. Turini also affirms that he incurred other liabilities, in and about the prosecution of the work, to Joseph Carabelli, amounting to $3,095.97, for which sum Carabelli obtained an assignment, copy of which has been submitted to this Commission.

Margaret Turini, as administratrix of Giovanni Turini, deceased, on the 27th of August, 1899, addressed the Secretary of State of the United States of America. On the 11th of May, 1903, a supplemental memorial was filed with the Department of State, in which, after making an exposition of the indebtedness incurred by the said Giovanni Turini, in carrying out his contract with the Government of Venezuela, with the Gorham Manufacturing Company, Joseph Carabelli, and the Lyons Granite Company, and other expenses incurred by the said Turini for plaster and modeling and labor, affirms that the statue of General Páez has been cast in bronze by the Gorham Manufacturing Company, and since 1897 has been ready for delivery; that the model of the statue of Liberty is at the factory of the Gorham Manufacturing Company, ready to be cast in bronze; that the model for the statue of General Bolívar was fully completed by the said Giovanni Turini in his lifetime. That its artistic merits were passed upon by the Municipal Art Commission of the City of New York, as appears by letter of its president to the said Turini, dated May 25, 1899; that said Turini received in all from the Government of Venezuela the sum of $8,130, leaving an unpaid balance amounting to the sum of $34,870. That it has been estimated that it would cost the sum of about $11,000 to complete the statues of Liberty and Bolívar, and in case the Venezuelan Government should prefer not to have the statues completed, deducting the sum of $11,000 from the $34,870, there would be a balance due of $23,870, to which should be added either interest thereon from January 1, 1898, or the interest on the said debts incurred to the Gorham Manufacturing Company, Joseph Carabelli, and the Lyons Granite Company, which item of interest, in the aggregate, amounts to the sum of $3,623.36, and added to the said sum of $23,870, makes a total sum of $27,493.36.

As it appears from the above-stated facts, the points submitted to the decision of this Commission spring from the contract celebrated between the Government of Venezuela and Giovanni Turini for the execution of certain sculptorial works, and the case must be disposed of as being that of the administratrix and the heirs at law of Giovanni Turini, sufficiently authorized to prosecute this claim against the Government of Venezuela.

The assignments obtained by the Gorham Manufacturing Company and Joseph Carabelli only give to the creditors the right to collect the amount of their credits from what the Government of Venezuela might have to pay to the administratrix and heirs at law of Giovanni Turini for the responsibilities incurred by said Government by reason of the contract celebrated with Turini.

In his answer, the honorable agent of the Government of Venezuela refers to the merits of a memorial submitted to him by the minister of public works, containing the recital of the facts recorded in his department in reference to the above-mentioned contract with Turini, and the sundry incidents occurred thereon. The honorable agent of the United States, in his replication, admits that in that memorial the statement of facts is essentially in accord with that made in the brief submitted on behalf of the United States in this matter.

From the narrative of those facts it appears that several months after the beginning of the work which Turini undertook to execute, the Venezuelan consul in the city of New York, charged with the inspection of the statues, reported on June 22, 1897, to the Venezuelan Government that he had seen the model in clay of the statue of Bolívar uncompleted; that they were working on the bronze casting of the statue of Páez, and were making the miniature in clay of the statue of Liberty, and consequently he could not judge of the artistic merits and other conditions of the works.

Turini, on July 12, 1897, addressed a private letter to the President of the Republic, asking for the payment of $10,000 promised him, inasmuch as to that date there was due him more than $20,000. This letter was answered by the minister of public works, who informed him that the President would personally attend to his request, and would give a favorable solution to it, as soon as the financial situation would allow it.

The terms of that correspondence prove sufficiently that the suspension of payment of several monthly sums did not constitute a breach of contract, because Turini did not take the delay of payment as a resolutory cause, nor did he stop the execution of the work for that motive in order to put forward his claim against the Government of Venezuela. At this stage of events, and in the month of September of the same year, the Government of Venezuela had notice that the National Society of Sculpture of the City of New York refused to give its approval to the clay model of the liberator's statue, and consequently that the board of parks of the same city would not give its permit for the erection of the statue as then modeled. The Venezuelan Government having requested Turini to advise the reason of the rejection of the model, to send information about all the particulars pertinent to the execution of the statues, and about the report of the National Society of Sculpture, he answered that, having invited the said society to examine the model in clay of the liberator's statue, he was notified one month after that the statue could not be accepted; but that he succeeded in removing such difficulties after speaking with Mr. Strong, the president of the park commission, who agreed to have the statue accepted, provided it was an exact copy of the original existing in Caracas; and, finally, that in that same month he would finish the new model in plaster, and the statue should not be cast until approved by the artists.

The terms of the official report addressed by the National Society of Sculpture to the board of public parks of New York, reads as follows:

That the clay model of the statue of Bolívar, such as it appears at the sculptor's study, does not have the conditions of artistic excellence required to be erected in a public place or park of the city, and consequently does not recommend its acceptance.

After these facts Turini sent on November 20, 1897, a demonstrative account of the sums he pretended the Government of Venezuela owed him for his contract, to wit:

	Bolivars.
For the statue of General Páez	106,000
For the statue of Liberty	71,900
For the statue of the Liberator	50,000
Total	227,900

From that total sum Turini made the deduction of 50,000 bolivars for the statue of the Liberator, being in doubt at that time of the acceptance of the model by the board of public works of New York, and having to wait for the Government's order to cast it in bronze. Turini also stated that he had received the sum of 43,125 bolivars, leaving a balance of 134,775 bolivars for the statues of Páez and Liberty which he said would soon be finished and ready to be delivered on board ship.

It was not until May 25, 1899, that C. T. Barney, president of the Artistic Municipal Commission, sent a letter to Turini informing him that in session of the day before the commission had approved the new model of the statue of General Bolívar, and on July 31st of the same year, the Government of Venezuela addressed Turini in reference to a note of Messrs. Olney & Comstock, Turini's attorneys, about the acceptance by the Artistic Commission of New York of the modified model of the statue of Bolívar, and gave its conformity for its execution. One month after this authorization, on the 27th day of August, 1899, Giovanni Turini died in the city of New York, leaving the statue of General Páez cast in bronze by the Gorham Manufacturing Company and ready for delivery with its pedestal constructed by Joseph Carabelli; leaving also two clay models of the statue of Liberty and of General Bolívar; and a granite pedestal with inscriptions thereon, for the statue of Liberty, constructed by the Lyons Granite Company.

From the aforesaid, and a just appreciation of the facts, come forth the following conclusions:

First. There was no breach of the contract on the part of the Government of Venezuela by the nonpayment of the stipulated monthly sums, as alleged, because Turini, with perfect knowledge of that fact, did not make it a cause of breach, and pursued the execution of the work, relying on the promises which were made to him that the payment of the sum overdue, in conformity with the agreement, should be paid as soon as the financial situation would allow it. It must be taken into consideration that the price of an artistic work is not properly due until finished and accepted as satisfactory by the person who ordered the execution of the same, and that the monthly advances offered to Turini on account of the prices of the statues were only a facility afforded Turini in order to help him in the performance of his duties as enterpriser, and he was at any time at liberty to renounce and not take advantage of it.

Second. The incidental and very important event of the refusal of the clay model of the liberator's statue by the board of public parks of New York, which took place in August of the year 1897, having as a motive for such refusal the circumstance that the clay model of the statue of Bolívar, such as it appeared in the sculptor's study, did not have the conditions of *artistic excellence* required in such monuments to be

erected in a public place or park, *had the consequence of interrupting the final execution of the Liberty and Liberator's statues*, giving occasion to considerable correspondence between the Government of Venezuela and Turini *about the securities asked for by the said Government in reference to the artistic merits of all the statues, and was also the cause of a proposition made by Turini to the Venezuelan Government on November 20, 1897, to withdraw from the whole amount of his contract the sum of 50,000 bolivars, price estimated by him for the statue of General Bolivar, and of an offer to deliver the statues of General Páez and Liberty, all completed and free on board at the port of New York for the sum of 134,775 bolivars*, deduction having been made of 43,125 bolivars already received by him.

Afterwards, on the 22d of March, 1899, another proposition was made by Mr. Oldrini, Turini's attorney, to the Venezuelan Government regarding the delivery of the statue of General Páez and its pedestal, not on board, but at the factory, and to deliver the pedestal of the statue of Liberty, the clay model of this last, and its casted parts, Turini keeping the clay model of Bolívar's statute, all for the sum of $25,000 to be paid: $15,000 cash down and the balance in monthly installments, without taking into consideration the $8,130 already paid to Turini. *To this proposition* the Government of Venezuela answered on the 2d day of June, 1899, formulating *a counter proposition*, to wit: To pay $15,000 for the statues of General Páez and Liberty all completed, in partial monthly payments of $3,000 from the last day of said month of June. This counter proposition was not accepted by Turini's attorneys, and on the 31st of July the Government addressed again Messrs. Olney & Comstock, after the receipt of the final approval by the New York Artistic Commission of the new clay model of the statue of General Bolívar, requesting that sketches or reproductions of the models for the statues of General Páez and Liberty be sent for examination as to the artistic conditions of the one and the other, in order to make a definite arrangement about their prices and payments. In the meantime Messrs. Olney & Comstock, on behalf of Turini, addressed the Government of Venezuela, *promoting the execution of the contract under the following conditions:* That the Government would accept the three statues referred to in the original contract for the price stipulated of $43,000, less $8,130 already paid, and the balance of $34,870 to be paid $15,000 cash down and $19,870 in monthly payments of $3,000 each. To this last *proposition* the Government did not give any answer, and the death of Turini, which occurred one month later, on the 27th of August, 1899, caused the whole affair to remain at a standstill. As this matter stood at the time of the death of Giovanni Turini it is apparent that there was not any definite understanding established between the Government of Venezuela and Giovanni Turini, neither about the acceptance of the models for the statues of General Páez and Liberty, nor about the price to be paid for the execution of the same; there was only an understanding for the casting in bronze of the statue of General Bolívar by reason of the acceptance by the Venezuelan Government of the modified model executed by Turini and approved by the president of the Municipal Art Commission of the city of New York.

Third. The death of Giovanni Turini, which took place before the completion of the statues of Liberty and General Bolívar, is a resolutive cause of the original contract between the Government of Venezuela

and Turini in reference to the execution, pending at the time of Turini's death, of the statues of Liberty and the Liberator. That resolutive cause entitled the administratrix and heirs at law of Turini to be paid, in proportion to the price agreed, for the work done, and for the value of materials employed and expenses incurred thereon, provided the work done and materials employed were of some use to the other party. In reference to the pedestal for the statue of Liberty, constructed by the Lyons Granite Company, it is not apparent that it could be of any use to the Government of Venezuela to have it without the statue, because in the matter of statues the material of the pedestal is of very secondary importance. The work executed by Turini in modeling the statues of Liberty and of the Liberator, and also the expenses incurred in such works, which amounted to the sum of $1,250, must be recognized as good title for compensation. For that motive and in consideration of the sum of $8,130 received by Turini during his lifetime, on account of the whole price of the statues and pedestals, a deduction of $5,000 must be made from the $8,130 as compensation for the personal work of the sculptor and expenses incurred by him in the modeling of said statues, thus leaving the sum of $3,130 to be disposed of as determined in the following conclusions.

Fourth. The completion by Giovanni Turini of the statue of General Páez and its pedestal, entitles the administratrix and heirs at law of Giovanni Turini to the payment of the price of that work by the Government of Venezuela, provided, that the sculptural work should be in perfect accordance with the terms specified in article 5 of the original contract between the minister of public works of the Venezuelan Government and Giovanni Turini, dated on the 28th of July, 1896, and besides that the materials employed and the artistic execution prove satisfactory, as is necessary in all works of this kind.

The Commission not having at its disposal the necessary elements to decide on these technical points, nor being able to fix the price for the statue of General Páez and its pedestal in proportion to the full amount of the contract, it is advisable to refer both parties in this claim to the following decision:

The Government of Venezuela is not obliged to receive the pedestal for the statue of Liberty, nor to pay its value, but a compensation is granted in favor of the administratrix and heirs at law of Giovanni Turini, in the sum of $5,000, to be deducted from the $8,130 received by the cujus, for his labor and the expenses incurred in modeling the statues of Liberty and General Bolívar; the clay models for both statues to become the property of the Government of Venezuela.

The Government of Venezuela and the administratrix and heirs at law of Giovanni Turini are bound to appoint, by mutual agreement, an expert, or a commission of three experts, named one by each party and the third by the two experts named. And said expert or commission will proceed to examine whether the statue of General Páez and its pedestal, are constructed in accordance with the terms of article 5 of the aforesaid contract, dated July 28, 1896, and if they give sufficient satisfaction in regard to their material and artistic merits, the Commission will fix in such case the value of the monument in proportion to the total amount fixed in the original contract for the three statues and the two pedestals, two of which had to be put on board ship by Turini at the port of New York, and the third one to be erected at Turini's expense in Central Park, New York City. After

fixing in such manner the sum that the Government of Venezuela should have to pay to the administratrix and heirs at law of Giovanni Turini for the value of the statue of General Páez and its pedestal, the Government of Venezuela is entitled to deduct from that the sum of $3,130, as balance due by the administratrix and heirs at law of Turini on the sum of $8,130 already paid by the Venezuelan Government during the lifetime of Turini; and the assignees, the Gorham Manufacturing Company and Joseph Carabelli, are entitled to exercise their rights for collecting from the Government of Venezuela, from the balance due to the administratrix and heirs at law of Giovanni Turini, if any, up to the amount of $6,319 on the part of the Gorham Manufacturing Company, and of $3,095 on the part of Joseph Carabelli. Any balance left for the price definitely fixed by the decision of the experts, to belong to the administratrix and heirs at law of Giovanni Turini.

In no other way, it appears to me, can this Commission dispose of the claim.

BARGE, *Umpire:*

A difference of opinion arising between the Commissioners of the United States of America and the United States of Venezuela, this case was duly referred to the umpire.

The umpire having fully taken into consideration the protocol and also the documents, evidence, and arguments, and likewise all other communications made by the two parties, and having impartially and carefully examined the same, has arrived at the decision embodied in the present award.

Whereas, on July 25, 1896, an agreement was made between the secretary of public works of the United States of Venezuela, fully authorized by the President of the Republic, and Giovanni Turini, sculptor, citizen of the United States of America, residing in the city of New York, represented by Messrs. J. Boccardo & Co., Caracas, which agreement reads as follows:

Conditions agreed upon between the secretary of public works of the United States of Venezuela, fully authorized by the President of the Republic, and Giovanni Turini, sculptor, residing at the city of New York, Dongan Hills, Richmond County, of the United States of North America, represented by Messrs. J. Boccardo & Co., merchants of this city, as it will be further stated, for the execution of three statues, one equestrian of General José Antonio Páez, another one of La Libertad, both to be erected in the city of Caracas; and a third one, El Libertador, destined to the city of New York.

First. Giovanni Turini binds himself to execute the aforesaid statues for the amount of $43,000 gold, or, say, 227,000 bolivars, which is its equivalent at the rate of exchange of 5 bolivars and 30 centimos to 1 dollar, which amount the Government of Venezuela will pay at the city of Caracas to Turini, or whomsoever shall be authorized to represent him, in seventeen monthly payments of $2,300 per month, or 12,190 bolivars, and one monthly payment besides of $3,900, or, say, 20,670 bolivars.

Second. Giovanni Turini names as attorneys with power to represent him in this city, Messrs. J. Boccardo & Co., merchants of the same. Said power accompanies this agreement so as to enable them to represent said Turini before the National Government in this arrangement, and to collect the payments for his account in accordance with the obligations this Government binds itself.

Third. The first monthly payment will be made at the office of Messrs. J. Boccardo & Co., the 1st day of August next.

Fourth. Turini binds himself to deliver the statue of Páez and of La Libertad on board ship at the port of New York, two months before the day set for the inauguration of the same, being for the first statue the 2d day of April, 1897; and for the second, the 5th day of July, 1897.

Fifth. These monuments will be made in conformity with the decrees of the Executive of the 3d and 4th of July of the present year in reference to the same, and also in conformity with the sketches of said statues Turini has delivered to the secretary of public works.

Sixth. The equestrian statue of El Libertador, which the National Government offers or presents to the city of New York to replace the one existing at present in that city at the Central Park, will be a replica or copy of the one erected to the memory of the said Libertador in the Plaza Bolívar of this capital with only one change, that the dimensions of the one to be built will be one-fourth larger than natural size. The materials for the pedestal as well as for the statue will be of the same kind as those used for the aforesaid monument, which will serve as a model.

Unique condition: Giovanni Turini binds himself to deliver this monument to the representative of Venezuela at New York, who will be opportunely named or appointed in the course of the month of December, 1897, said Turini binding himself also to engrave on the pedestal the inscriptions the Government of Venezuela may suggest to him.

Seventh. Giovanni Turini is under obligation to place for his account in New York, and at the spot that will be designated, the statue of El Libertador.

Eighth. In the price of $43,000 the freight from New York to Caracas is not included, nor the expenses for the erection of the monuments to Páez and La Libertad.

Ninth. At the time of the shipment of the two monuments at New York the Venezuelan consul at that city will have to certify that the same have been properly executed and to be in good condition and well packed.

A duplicate copy of this agreement, both of the same tenor, has been drawn at Caracas the 28th day of July, 1896.

G. TURINI,
Per J. BOCCARDO & Co.,
H. PEREZ B.

And whereas Giovanni Turini died on the 27th of August, 1899, and his widow, Margaret Turini, who was legally instituted administratrix of his inheritance, brought a claim against the United States of Venezuela, based on the contract as cited here above, in which claim the Gorham Manufacturing Company and Joseph Carabelli, holding rights as citizens of the United States of America, appear as intervenors, there must be considered whatever claims may arise out of the above-mentioned agreement on behalf of the heirs of Giovanni Turini.

And whereas it appears from the evidence brought before the Commission that the Government of Venezuela did not fulfill the conditions of article 1 of the agreement, failing to make the stipulated monthly payments;

And whereas the same evidence shows that Giovanni Turini did not fulfill the conditions of article 4 of the agreement, not having ready for shipment at the port of New York on the 2d day of February, 1897, the statue of Páez with pedestal, which failure can not in equity be said to be excused by the failure of the Venezuelan Government to meet the monthly payments at the time indicated, as this latter fact did not prevent Turini from entering into a contract with the Gorham Manufacturing Company for the casting in bronze of the said statue, whilst even in May, 1897, it did not prevent him from agreeing with Carabelli about the making of the pedestal that should have been ready before February 2 of that year;

And whereas the evidence clearly shows that neither of the two parties had the intention to make this mutual failure a resolutive cause, but each requiring to attain the object of the agreement—Venezuela the statues according to contract and Turini the payment—both, to meet the changed circumstances, almost up to the date of

Turini's death, interchanged propositions for a solution of the difficulties that arose out of the nonfulfillment of some conditions of the existing contract.

Whereas it is hereby clearly shown that the original contract was not regarded by them legally dissolved (annulled) the death of Turini should in equity be regarded by parties as the resolutive cause, and therefore the administratrix and heirs at law are entitled to be paid in proportion to the price agreed for the work done and the value and materials employed and expenses incurred thereon, providing the work done and materials employed are of some use to the other party; and whereas it is proved that the statue of Páez, with its pedestal (for which the sculptor fixed $20,000, this seeming a fair estimate when considering the price established for the three statues in regard to the conditions announced in the decrees of their erection), had been ready for delivery many months before November, 1898; that Turini had completed the models of the statues of Liberty and Bolívar, and that the pedestal of the statue of Liberty was also completed; that the expense incurred for plaster and labor in modeling the two statues of Liberty and Bolívar amounted to the sum of $1,250, and that the sum of $3,500 may be regarded as a just compensation for the personal work of the the sculptor on both models;

And whereas the pedestal of Liberty without its statue can not be said to be of any use to the Government of Venezuela, because a pedestal has to be regarded as being in harmony with the figure placed on it and from an artistic point of view, forming with the statue one whole monument; and whereas the statue of Páez, with its pedestal, as well as the models of the statues of Liberty and Bolívar, certainly can be of some use to the Government quite apart from the very varying and very personal opinions on their artistic value;

Whereas, therefore, the United States of Venezuela are indebted to the heirs of Turini, for the statue of Páez and pedestal, $20,000; for making the models of the statues of Liberty and Bolivar (which models become the property of Venezuela), $3,500; for material and labor in modeling these statues, $1,250, making together the sum of $24,750.

Whereas, however, Turini, during his lifetime already received for his work from the Government of Venezuela the amount of $8,130, the Venezuelan Government owes the inheritance of Turini the sum of $16,620, with interest at 3 per cent per annum from the 1st of January, 1898—the date on which, according to the agreement, the money was due—until the 31st of December, 1903, the anticipated date of the final award by this Commission, making together the sum of $19,611.60, which sum is therefore allowed to the administratrix and heirs at law of Giovanni Turini, deceased.

And whereas, further, at the time of Turini's death, the estate was and still is liable for the following debts, which were incurred by him in carrying out his agreement as to the statue of Páez, viz:

1. To the Gorham Manufacturing Company the sum of $6,319, with interest thereon at 6 per cent per annum from July 1, 1897.

2. To Joseph Carabelli the sum of $3,095, with interest thereon at 6 per cent per annum from October 1, 1898.

The above-named parties, intervenors in this claim, should be protected to the extent of their proportionate interest in the distribution of the award herein made to the estate of Giovanni Turini, deceased.

KUNHARDT & CO. CASE.

(By Bainbridge, Commissioner:)

While the property of a corporation in esse belongs not to the stockholders individually or collectively, but to the corporation itself, it is a principle of law universally recognized, that upon dissolution the interests of the several stockholders become equitable rights to proportionate shares of the corporate property after the payment of the debts. The rights of the creditors and shareholders to all the property of the corporation, including choses in action, are not destroyed by dissolution or liquidation.

Claimants, as citizens of the United States, and the equitable owners of their proportionate share of the property of the dissolved corporation, have a standing before the Commission to claim indemnity for such losses as they may prove they have sustained by reason of the wrongful annulment of the concession.

The extent of interest of the claimants not ascertainable because of the want of proof of amount of liabilities, and therefore claim dismissed without prejudice.

(By Paúl, Commissioner:)

The interest acquired by claimants by investing their money in shares of the corporate stock is a private transaction and creates no judicial bonds between the claimants and the Government of Venezuela during the existence of the corporation.

The shareholders of a corporation are not co-owners of the property of the corporation during its existence; they only have in their possession a certificate which entitles them to participate in the profits and to become owners of proportional parts of the property of the corporation when the latter is by final adjudication dissolved or liquidated.

This corporation has not been dissolved or liquidated in accordance with the laws of Venezuela, and therefore the claimants have no standing to claim before the Commission. Claim should be dismissed without prejudice.

(By the Commission:)

Neutral property destroyed by soldiers of a belligerent with authorization, or in the presence of their officers or commanders, gives a right to compensation whenever the fact can be proven that said superiors had the means of preventing the outrage and did not make use of them.

BAINBRIDGE, *Commissioner* (for the Commission):

Kunhardt & Co., claimants herein, are a copartnership doing business in the city of New York, and composed of Henry R. Kunhardt, George W. Kuhlke, and Franz Mueller. Kunhardt and Kuhlke are native citizens of the United States. Mueller was born in Germany in 1859, but was duly naturalized as a citizen of the United States on June 12, 1896, in the district court of the United States for the southern district of New York.

On behalf of Messrs. Kunhardt & Co. the United States presents two separate and distinct claims.

COMPAÑÍA ANÓNIMA TRASPORTES EN ENCONTRADOS.

The memorial states that:

On the 24th of February, 1897, a contract was entered into by and between the minister of public works of Venezuela, J. M. Ortega Martinez, and Gen. Joaquín Valbuena U. for the construction of a wooden wharf and other works of public utility in the port of Encontrados, on the Zulia River, in the State of Zulia, Venezuela. By the said contract and in consideration of the building and maintaining of the wharf and other structures by Valbuena, the Government of Venezuela granted to Valbuena, his heirs and successors, the exclusive right

for fifteen years to collect tolls from the ships or boats for loading and unloading at said port, a duty not to exceed 75 centimos for every hundred kilograms gross weight of merchandise. The grantee, his heirs or successors, were given the right of ownership over the wharf and its belongings during said term of fifteen years, upon the expiration whereof the wharf and all other works were to become the property of the nation.

The contract by its terms could be transferred to another person or company, national or foreign, with the approval of the Government of Venezuela.

This contract was ratified by the Congress and the national Executive on April 2, 1897, and published in the Gaceta Oficial.

On December 15, 1897, Valbuena, with the consent of the President of the Republic, assigned all his rights under the contract to Frederico Evaristo Schemel, who, on December 16, 1897, with the consent of the President of the Republic, assigned all his rights under the contract to Bernardo Tinedo Velasco.

Tinedo completed the wharf and other structures in accordance with the terms of the contract. On May 10, 1898, the department of public works appointed Victor Brigé, an engineer, to examine the work, and on July 14, 1898, Brigé reported to the Government that the wharf and other structures conformed to all the requirements of the contract, whereupon said work was accepted on behalf of the Government.

On March 14, 1899, with the approval of the national Executive in the council of ministers, the department of public works authorized Tinedo to assign all his rights under said contract to the company known as "Compañía Anónima Trasportes en Encontrados." This company was formed in Maracaibo on April 10, 1899, by an agreement entered into by Bernardo Tinedo V., Rafael Tinedo, Carlos Rodriguez, and other citizens of Maracaibo, for the purpose of assuming the rights and liabilities of the Valbuena contract. By its articles of agreement it was provided that said company should remain in existence until the expiration of the fifteen years during which the right to collect the tolls was granted to Valbuena and his successors. The capital of the company was 300,000 bolivars, divided into 400 shares of 750 bolivars each. Said shares were issued for full value to the members of said company.

On April 18, 1899, pursuant to the authorization given him by the department of public works, Tinedo, in consideration of the sum of 300,000 bolivars, conveyed to the "Compañía Anónima Trasportes en Encontrados" the wharf and other structures, together with all the rights and privileges under the contract, and said company assumed all the duties and liabilities imposed by said contract. This conveyance was registered in the office of the register of Maracaibo on April 22, 1899.

On or about July 1, 1899, Messrs. Kunhardt & Co. became the owners of an interest in the "Compañía Anónima Trasportes en Encontrados" amounting to 243,750 bolivars, represented by 325 certificates of stock, each certificate representing one share of a par value of 750 bolivars.

On November 15, 1900, the national Executive of the Republic, through the department of public works, adopted the following resolution:

It is resolved,
As the agreement entered into on the 24th of February, 1897, between the department and the citizen, Joaquín Valbuena Urquinaona, for the construction of a wharf in the port of Encontrados, has not been fulfilled in all its parts, the supreme chief of the Republic has declared said contract void.
Let it be known and published.
For the national Executive:

J. OTAÑEZ M.

This resolution was published in the Gaceta Oficial November 16, 1900.

The memorialists allege that this resolution, whereby the Valbuena contract and concession were annulled, was without legal or other cause or justification, and wrongfully deprived the stockholders of the company, and in particular Kunhardt & Co., as owners of over three-fourths of said stock, of the property to which they were legally entitled and in which they had invested funds to the amount of 243,750 bolivars upon the faith of the promise of the Government of Venezuela as set forth in said contract and concession; that since November 15, 1900, the Venezuelan Government has prevented said company from collecting the toll to which it was and is justly entitled under the terms of the said contract and has thereby rendered worthless the wharf and other structures erected at Encontrados, and the contract and concession under which the same were built, all in contravention of the terms of said contract; that on January 19, 1901, the shareholders of said company, including Kunhardt & Co., protested against the action of the Executive in said attempted cancellation of the contract and in the subsequent proceedings in pursuance of said cancellation, but that the Venezuelan Government has continued to prevent the collection of the tolls and has refused to allow said company to exercise its rights under the contract.

Kunhardt & Co., claim that, by reason of said wrongful action of the Government of Venezuela, they have been damaged in the sum of 243,750 bolivars, equivalent to $46,875 in United States gold, being the value of their stock in the Compañía Anónima Trasportes en Encontrados prior to November 15, 1900, and they claim indemnity in that amount.

The learned counsel for Venezuela in his answer declares that this claim is unfounded in every aspect; that the corporation Trasportes en Encontrados was organized solely by citizens of Venezuela; that claimants were not in any manner interested in its organization, and that if they became the owners of various shares of stock issued by said company, it was a voluntary act on their part; that if any claim could arise against the Government of Venezuela on account of the annulment of the contract of February 24, 1897, only the managers of the company, or the receiver in case of dissolution, could institute the suit; that the claimants, taking advantage of their status as foreigners by making this claim are using an extraordinary remedy not available to the other shareholders of the company.

Article 163 of the Código de Comercio of Venezuela recognizes three kinds of mercantile companies:

(1) *La compañía en nombre colectivo*, in which all the members administer the business themselves or by means of an agent chosen by common accord. The liability of each member is unlimited. It corresponds to a general partnership.

(2) *La compañía en comandita*, in which one or more of the members are bound only to the amount of their investment. There are two kinds of companies *en comandita:* (*a*) Simple and (*b*) divided into shares. It is similar to what is known in England and the United States as a limited partnership.

(3) *La compañía anónima*, in which the capital is managed by shareholders who are responsible only to the value of their shares. It is the legal entity known to the common law as a private corporation.

Any number of persons not less than seven may by agreement associate themselves into a "compañía anónima." No previous authorization is necessary. It is a corporation created under general charter. The law requires that the articles of agreement (contrato de sociedad), in writing, whatever the number of shareholders, must be made in duplicate, one copy of which is to be filed in the office of the register and the other in the records of the company. (Art. 195.)

The powers, capacities, and incapacities of a corporation under the civil law are similar to those under the English and American corporation law.

The Compañía Anónima Trasportes en Encontrados was organized April 10, 1899, by nine citizens of Maracaibo and its articles of agreement filed in the registry as provided by law on April 13, 1899.

The articles of agreement declare the objects and purpose of the corporation to be the acquisition of the rights and privileges granted by and the assumption of the obligations of the contract executed between the National Government and Gen. Joaquín Valbuena on February 24, 1897. The capital of the company is fixed by said articles at 300,000 bolivars. On April 18, 1899, Bernardo Tinedo Velasco, the then owner of the concession, pursuant to the authorization of the Government, duly transferred to the company all the rights and privileges which had been acquired by him as concessionary under said contract. The consideration of the transfer is declared to be 300,000 bolivars.

H. R. Kunhardt states in an affidavit dated May 20, 1903, that as a partner of the firm of Kunhardt & Co. he purchased on or about July 1, 1899, 325 certificates of the stock of said compañía of the par value of 750 bolivars each, amounting to 243,750 bolivars, or $46,875 American money; that the reasonable value of said 325 certificates on November 15, 1900, was $46,875, and that during the year from September 12, 1899, to September 20, 1900, the company declared and paid dividends on said stock amounting to over 10 per cent on the par value of each share of stock.

The capital of the Compañía Anónima Trasportes en Encontrados was represented by the alleged value of the contract and concession of February 24, 1897. It is claimed that the executive action of November 15, 1900, annulling the contract renders worthless the wharf and other structures erected at Encontrados and the contract and concession under which the same were built. In other words, it took away the company's capital. Paragraph 2 of article 204 of the Código de Comercio provides that when the capital of a company has been diminished two-thirds, the company is necessarily put in liquidation if the shareholders do not prefer to refund the same or limit the capital to the existing balance, provided the latter is sufficient to obtain the objects of the company. Article 42 of the reglamento of the company provided that when any of the cases expressed in paragraph 2 of article 204 of the Código de Comercio should exist the company could be dissolved.

When the capital of the corporation was practically destroyed by the taking away of that which represented it, the company was dissolved by operation of law and the by-laws above cited.

While the property of a corporation in esse belongs not to the stockholders individually or collectively, but to the corporation itself, it is a principle of law universally recognized that, upon dissolution, the interests of the several stockholders become equitable rights to proportionate shares of the corporate property after the payment of the debts. The rights of the creditors and shareholders to the real and personal property of the corporation, as well as to its rights of contract and choses in action, are not destroyed by dissolution or liquidation. But in such case the creditors of the corporation have a right of priority of payment in preference to the stockholders.

The principal asset of the Compañía Anónima Trasportes en Encontrados was the Valbuena concession. Under it the Government of Venezuela for a consideration agreed to give the grantee, his heirs, or successors the rights and privileges therein designated for a period of fifteen years. It is fundamental that if one party to a contract wrongfully violates it he becomes liable to the other for such damages as the latter may sustain by reason of the breach, and this is true "whether such party be a private individual, a monarch, or a government of any kind."[a]

Article 691 of the civil code of Venezuela recognizes and declares that a property right may rest in contract. If the rights granted under the contract of February 24, 1897, were wrongfully taken away by the Government of Venezuela, compensation is justly due from that Government—first, to the Compañía Anónima Trasportes en Encontrados, or, second, upon the dissolution of said company, to its creditors and shareholders.

Messrs. Kunhardt & Co., as citizens of the United States and the equitable owners of their proportionate share in the property of the dissolved corporation, have a standing before this Commission to make claim for indemnity for such losses as they may prove they have sustained by reason of the wrongful annulment of the concession.

The claim of Kunhardt & Co. is based upon the alleged value of the concession when called as being 300,000 bolivars, and it is urged on their behalf that they have been damaged to the reasonable value of their interest in the company as measured by their ownership of 325 shares of the capital stock of a par value of 750 bolivars each, or the total value of 243,750 bolivars, equivalent to $46,875 in United States gold.

But the real interest of Kunhardt & Co. is an equitable right to their proportionate share of the corporate property after the creditors of the corporation have been paid. An important, and indeed, an essential element of proof to determine the actual measure of the claimant's loss is entirely wanting here. No evidence of the amount of the corporate debts is presented, although the existence of corporate indebtedness is apparent. The protest of January 19, 1901, states that:

> The prejudices are very grave which the company, its stockholders, and many others who have interest in it, suffer from the Executive resolution which declared the contract base of this company "canceled." And said protest is made on behalf of the company, its stockholders, and others connected with it.

---

[a] See opinion of Sir Henry Strong and Hon. Don M. Dickinson in the Salvador Commercial Co. case. For. Rel. U. S., 1902, p. 871.

Who but creditors of the corporation can be parties in interest to this contract other than the company and its stockholders?

The value of the corporate shares and the extent of a shareholder's interest in the corporate property are absolutely dependent upon the relation which the assets of the corporation bear to its liabilities.

The absence of such a showing in this case renders impossible the determination of Kunhardt & Co.'s interest in the concession or the amount of loss they have sustained by its annulment. The claim must, therefore, be here disallowed, but without prejudice to the corporation, its creditors, and stockholders, or to the interest of these claimants therein.

EL MOLINO.

The memorials state:

(*a*) The firm of Kunhardt & Co., are, and since September 12, 1897, have been, the owners of an estate known as "El Molino," situated in the district of Barquisimeto, State of Lara, Venezuela. Said firm invested in the purchase and improvement of this property the sum of $35,000. The estate was used for the raising of sugar cane and the manufacture of sugar, the raising of corn and fodder, and for pasturing milch cattle and oxen. Since June 5, 1899, the estate has been in charge of J. Adolphus Ermin, as administrator and agent of claimants, and from said date to December 22, 1899, the firm received from the estate a monthly income exceeding 400 bolivars.

On the night of December 23, 1899, certain troops of the army of General Castro, under the immediate command of General Lara, entered upon and took forcible possession of said estate and encamped thereon for some time. During this period the troops seized for rations the cattle upon the estate and foraged their horses upon the growing crops, destroying all the corn and sugar cane growing upon the estate; took for their own use the horses, donkeys, and mules which were on the estate, and upon the departure of the troops they had killed or taken away all the live stock and destroyed all the growing crops; had injured and destroyed the wire fencing and greatly damaged the sugar house and sugar machinery.

As a direct result of the occupation of the estate by the troops of General Lara, the firm of Kunhardt & Co. sustained damages to the extent of 81,900 bolivars, equivalent to the sum of $15,750 in United States gold. An appraisal of the property lost and an assessment of the damages done were made by competent appraisers familiar with the property and its value. The report of said appraisers shows the loss sustained by claimants to be as follows:

	Bolivars.
85 selected milch cattle, several of them American, an average of 240 bolivars each	20,400
3 teams of donkeys, with their harness, at 1,200 bolivars per team	3,600
9 mules, at 500 bolivars each	4,500
18 horses, at 500 bolivars each	9,000
Damage to the residence	8,000
3 carts and their harness, at 400 bolivars each	1,200
Damage to the wire fence	2,000
300 tares of corn fodder, at 24 bolivars each	7,200
250 tares of sugar cane, at 40 bolivars each	10,000
Injury to the engine room and loss of the zinc of the engine house	16,000
Total	81,900
Or in United States money	$15,750

Said appraisement was verified by the appraisers before Señor R. M. Delgado, judge of the municipal court of the city of Concepción, on April 16, 1901.

(*b*) The claimants allege that since the occupation of "El Molino" by the troops in December, 1899, as above described, the district in which said estate is situated has been in a condition of civil disturbance, which has prevented them from restocking, replanting, or in any way making use of said estate, which, it is claimed, is highly adapted to agricultural use, and except for the civil disorder which has prevailed, would be exceedingly productive; that previous to the occupation of December, 1899, the estate yielded a net annual profit of $924; that the Government of Venezuela has failed to suppress said condition of civil disturbance, by reason whereof claimants have lost the use and occupation of said estate to their damage, in the sum of $3,054.33.

(*c*) In a supplemental memorial, dated May 20, 1903, claimants allege that they have sustained further losses and damages by reason of additional depredations committed by Government troops upon said estate, "El Molino;" that in order to maintain said estate and reduce as much as possible the damages suffered in respect thereto, the agent of claimants kept on the estate a small number of milch cattle and endeavored to raise hay and corn; that during the first part of the year 1902 the Government troops destroyed all the crops on said estate and seized five milch cattle, and that on the 2d day of April, 1903, said troops seized thirteen milch cattle from said estate, to the additional injury of claimants in the sum of $1,407.61.

(*d*) In a supplemental memorial dated June 22, 1903, claimants filed a "justificativo" in proof of loss and damages sustained by them in respect to said estate in addition to that shown in their previous memorials, in the sum of $2,635.77 gold.

The entire amount claimed for injuries sustained in connection with the hacienda "El Molino" is the sum of $22,847.71 United States gold.

The responsibility of a government for the appropriation of neutral property in time of war has been clearly stated in Shrigley's case[a] decided by the United States and Chilean Claims Commission of 1892, as follows:

(*a*) Neutral property taken for the use or service of armies by officers or functionaries thereunto authorized gives a right to the owners of the property to demand compensation from the government exercising such authority.

(*b*) Neutral property taken or destroyed by soldiers of a belligerent with authorization, or in the presence of their officers or commanders, gives a right to compensation, whenever the fact can be proven that said officers or commanders had the means of preventing the outrage and did not make the necessary efforts to prevent it.

The evidence submitted in support of this claim satisfactorily shows that the Government troops under the immediate command of General Lara entered upon and confiscated property of the estate "El Molino" in December, 1899, and at various times thereafter. A reasonable compensation is therefore due to claimants from the Government of Venezuela for the losses thus sustained. But that portion of the claim based upon the loss of the annual profits of the estate by reason of the civil disorder which prevailed in the district does not appear to be well founded. The situation of claimants' property in that regard did not differ from that of other property within the same district, and no government is immune from the occurrence of civil commotions. There is also in the last two memorials an obvious

[a] Shrigley v. Chile, Moore's Arbitrations, p. 3712.

duplication of the claim for the 13 milch cattle taken early in April, 1902. Several items of the claim appear to be excessive and the evidence of value is not wholly satisfactory.

The Commissioners have agreed upon an award in favor of Kunhardt & Co. on this branch of their claim in the sum of $13,947 gold coin of the United States.

PAÚL, *Commissioner:*

The United States of America presents in this case two individual claims on behalf of Kunhardt & Co.—one for the sum of $46,675 for damages arising from the cancellation ordered by the Government of Venezuela of a certain contract and the other for damages to the estate "El Molino" for the amount of $22,847.71.

The first claim is based upon the fact that Kunhardt & Co., being owners of a portion of the 400 shares stock capital of a corporation named "Trasportes en Encontrados," they consider themselves entitled to obtain directly from the Government of Venezuela the payment of damages which they allege they have suffered by the decree issued by said Government canceling the Encontrados contract.

The honorable agent for Venezuela, in his answer to this claim, maintains that the claimants have no right, as stockholders of an anonymous corporation, to set forth an action against the Government of Venezuela to obtain an award for damages caused by the annulment of a concession granted by said Government to a citizen of Venezuela and transferred afterwards to an anonymous corporation domiciled in Venezuela, and whose rights, properties, and titles are legally represented by its own manager during the existence of the corporation, or by its liquidators if the same has been put in liquidation.

The contract celebrated in April, 1897, between the minister of public works and Joaquín Valbuena Urquinaona, a citizen of Venezuela, had for its object the construction of a wooden wharf and other works in the port of Encontrados, on the river Zulia, in the State of Zulia. It was transferred two years after to an anonymous corporation called "Trasportes en Encontrados" formed by Venezuelan stockholders with Venezuelan capital, and the price of acquisition of the rights of the grant was paid by the corporation to the owner of the concession from its own funds.

The corporation appointed in its first general assembly of shareholders a board of directors and a manager, all Venezuelans, and chose as its domicile the city of Maracaibo, capital of the State of Zulia, being, consequently, a domestic corporation of Venezuela.

By the deed of the aforesaid transfer, which was recorded in the subsidiary office of the register of Maracaibo on the 22d of April, 1899, the corporation assumed all rights, exemptions, and privileges arising from the grant, and bound itself to the terms of the article 16 of the contract, which reads as follows:

> That any doubt or dispute arising from the interpretation of this contract should be decided by the courts of the Republic according to its laws, and they could not in any case be a motive for an international claim.

Can it be admitted as belonging to Kunhardt & Co., shareholders of the domestic corporation "Trasportes en Encontrados," the right to claim damages arising from the breach of a contract that does not belong to them, but which is the exclusive property of the corporation "Trasportes en Encontrados?"

Being the fundamental fact for this claim the wrongful annulment of a grant, the claimants necessarily must be the owners of such grant, and said owner, or his legal representative, is the only person entitled to claim restitution, indemnity, or compensation for the value of the property which has been taken from him. There is only one grant; the agreement between the Government of Venezuela and the grantee originates juridical ties only between the two contracting parties. That grantee was originally a Venezuelan named Joaquín Valbuena Urquinaona. Subsequently all the rights and privileges of said contract were transferred and assigned Frederico Evaristo Schemel, and on or about December 16, 1897, said Schemel transferred and assigned all his rights and privileges under said contract and concession to Bernardo Tinedo Velasco. This Tinedo Velasco assigned to the corporation "Trasportes en Encontrados" all his rights and liabilities. By this last transfer the moral person, also a Venezuelan, named "Compañía Anónima Trasportes en Encontrados," became the only owner of said rights, and this fact was expressly notified to the Government of Venezuela, who gave its authorization and conformity to the transfer by a decision of the department of public works of March 14, 1899.

The juridical ties created by the original contract between the Government of Venezuela and Joaquín Valbuena Urquinaona were, by the last transfer, finally established between the said Government and the Compañía Anónima "Trasportes en Encontrados." No juridical ties of any kind exist between Messrs. Kunhardt & Co. and the Venezuelan Government arising from the aforesaid contract.

The interest acquired by Kunhardt & Co. by investing their money in shares of the corporation is a private transaction between them and the corporation and does not create any juridical ties between the Government of Venezuela and them as shareholders during the existence of the corporation.

The shareholders of an anonymous corporation are not co-owners of the property of said corporation during its existence; they only have in their possession a certificate which entitles them to participate in the profits and to become owners of proportional parts of the property and values of the corporation when this one makes an adjudication as a consequence of its final dissolution or liquidation.

The Venezuelan Commercial Code in article 133 expressly determines that an anonymous corporation constitutes a juridical person distinctly separated from its shareholders. Article 204 of the same code provides that when the managers find that the social capital has reduced one-third they should call a general meeting of shareholders to decide whether the corporation ought to liquidate, and in section 2 of the same article it is provided that if the reduction of a capital is of two-thirds the corporation shall be put necessarily in liquidation, if the shareholders do not prefer to renew the capital or to limit the social capital to the existing funds, provided it would be sufficient to fill the object of the corporation.

The documents in evidence do not show any proof that the corporation "Trasportes en Encontrados" has been put in liquidation, neither has it dissolved in accordance with the commercial law and the statutes of the same corporation. The representation of all its rights, and its juridical person remain the same as they were at the last general special meeting held on January 19, 1901, being that representation

exercised by its board of directors. At the same meeting the shareholders limited their action to intrust the managers of the company with the formulation of a protest against *the annulment of the contract, to leave in safety the integrity of its rights and for all the prejudices and damage caused to the company, its stockholders, and others connected with it, in order to make them of value in the manner and at the time they believe opportune.*

Nothing appears to have been done by the managers or board of directors of the corporation "Trasportes en Encontrados" to liquidate the same nor to adjudicate any part of the corporation's property to the shareholders.

The integrity of the rights of the corporation remain in the corporation itself, and its exercise is specially and legally intrusted, by the common law, by the provisions of the commercial code, and by the social contract, to the manager and the board of directors. Therefore the said rights can not be exercised by any other person than the directors of the corporation.

Messrs. Kunhardt & Co. have no legal capacity to stand before this Commission as claimants for damages originated by a breach of a contract whose rights and obligations are only mutually established between the Government of Venezuela and the corporation Compañía Anónima "Trasportes en Encontrados."

The case of the claim of the Salvador Commercial Company and other citizens of the United States, stockholders in the corporation which was created under the laws of Salvador, under the name of "El Triunfo Company (Limited)," and the other one of the Delagoa Bay Railway Company,[a] to which the attention of the Commission has been called by the honorable agent of the United States, have been carefully examined, and they do not present any likeness to the present claim.

By the aforesaid considerations I consider that this first claim for damages, amounting to $46,875, must be disallowed, without prejudice to the rights of the corporation Compañía Anónima "Trasportes en Encontrados," its stockholders, and others connected with it.

In reference to the second claim, amounting to $22,847.71, for damages to the estate "El Molino," owned by Messrs. Kunhardt & Co., I entirely agree with the honorable Commissioner for the United States, in the appreciation of the evidence and the responsibility of the Government of Venezuela.

An award is therefore agreed to in favor of Kunhardt & Co. for the sum of $13,947 United States gold.

Orinoco Steamship Company Case.

(By the Umpire:)

Interpretation of the meaning of the word "owned" in the protocol.

Claims to be prosecuted by a government must be claims of such government both in origin and ownership. This rule, however, may be expressly changed by treaty.

Commission had jurisdiction to examine and decide all claims "owned" by citizens of the United States at the time of the signing of the protocol.

---

[a] See For. Rel. U. S., 1902, pp. 838 *et seq.*

A concession to the predecessor in interest of the claimant to use for foreign commerce certain waterways reserved exclusively for coastwise trade, and a stipulation that a like privilege should be granted to no other person, did not vest such a right in the claimant to alone navigate these channels as would prevent the Government from subsequently enacting legislation to revoke and annul the former law reserving these waterways exclusively for coastwise trade.

A stipulation in a concession from a government, that all doubts and controversies arising as to the interpretation and execution of the agreement shall be submitted to the local tribunals, and shall never be made the subject of international intervention, bars the concessionary from the right to seek redress before any other tribunals.

A stipulation in the concession that it might be assigned to third parties by giving previous notice to the Government makes it obligatory upon the concessionary to give such previous notice to the Government, otherwise any assignment of the rights and privileges acquired under the concession is absolutely void as against said Government.

Claims for compensation for the use by the Government of the property subsequent to the assignment are enforcible.

Claim for repairs necessitated by the ill treatment of the property while in the hands of the Government disallowed for want of evidence to show in what condition property was delivered.

Closure of ports and waterways during revolt by constituted authorities can not be considered as a blockade unless the rebels have been recognized as belligerents. The right to close portions of the national territory to navigation is inherent in all governments.

Granting permission to others, while refusing it to claimant, to run steamers during the closure of the Orinoco River does not give rise to any right to make a claim, when the Government had good grounds to believe that claimant was in sympathy with the revolutionary movement, although this was not a fact.

Claim for counsel fees in prosecution of case disallowed.

BAINBRIDGE, *Commissioner* (claim referred to umpire):

Inasmuch as, by reason of a disagreement between the Commissioners, this claim is to be submitted to the umpire, to whom in such case the protocol exclusively confides its decision, the Commissioner on the part of the United States limits himself to the consideration of certain questions which have been raised by the respondent Government, affecting the competency of the Commission to determine this very important claim.

It may be presumed that in framing the convention establishing the Commission the high contracting parties had clearly in view the scope of the jurisdiction to be conferred upon it and deliberately chose, in order to define that scope, the words most appropriate to that end.

Article I of the protocol defines the jurisdiction of the Commission in the following terms:

> All claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the Commission hereinafter named by the Department of State of the United States or its legation at Caracas, shall be examined and decided by a Mixed Commission, which shall sit at Caracas, and which shall consist of two members, one of whom is to be appointed by the President of the United States and the other by the President of Venezuela. It is agreed that an umpire may be named by the Queen of the Netherlands.[a]

The protocol was signed at Washington on behalf of the respective Governments on the 17th of February, 1903. In view of the explicit language of the article quoted above, it would seem too clear for argument that the contracting parties contemplated and agreed to the submission to this tribunal of all claims not theretofore settled by diplomatic agreement or by arbitration which were on that date owned by citizens of the United States against the Republic of Venezuela.

---

[a] See p. 1.

The Orinoco Steamship Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey. It is the successor in interest, by deed of assignment dated April 1, 1902, of the Orinoco Shipping and Trading Company (Limited), a company limited by shares, organized under the English companies acts of 1862 to 1893, and duly registered in the office of the register of joint-stock companies, London, England, on the 14th day of July, 1898. Among other of the assets transferred by the said deed of assignment were "all franchises, concessions, grants made in favor of the Orinoco Shipping and Trading Company (Limited) by the Republic of Venezuela, particularly the concession granted by the Government of Venezuela for navigation by steamer from Ciudad Bolivar to Maracaibo, originally made by the national Executive with Manuel Antonio Sanchez, and approved by Congress on the 8th day of June, 1894," and "all claims and demands existing in favor of the Orinoco Shipping and Trading Company (Limited) against the Republic of Venezuela." The claims and demands referred to constitute in the main the claim here presented on behalf of the Orinoco Steamship Company.

The learned counsel for Venezuela contends that:

> At the time when the acts occurred which are the basis of the claim, the Orinoco Steamship Company did not exist and could not have had any rights before coming into existence, and in order that it might be protected to-day by the United States of America it would be necessary, in accordance with the stipulations of the protocol, that the damages in the event of being a fact should have been suffered by an American citizen, not that they should have been suffered by a third party of different nationality and later transferred to an American citizen; such a proceeding is completely opposed to equity and to the spirit of the protocol.[a]

In the case of Abbiatti *v.* Venezuela, before the United States and Venezuelan Claims Commission of 1890, the question arose whether the claimant, not having been a citizen of the United States at the time of the occurrences complained of, had a standing in court; and it was held that under the treaty claimants must have been citizens of the United States "at least when the claims arose." This was declared to be the "settled doctrine." Mr. Commissioner Little, in his opinion, says:

> As observed elsewhere, the infliction of a wrong upon a State's own citizen is an injury to it, and in securing redress it acts in discharge of its own obligations and, in a sense, in its own interest. This is the key—subject, of course, to treaty terms—for the determination of such jurisdictional questions: Was the plaintiff State injured? It was not, where the person wronged was at the time a citizen of another State. The injury there was to the other State. Naturalization transfers allegiance, but not existing State obligations.[b]

It is to be observed that in attempting to lay down a rule applicable to the case the Commission is careful to make the significant reservation that the rule enunciated is "subject, of course, to treaty terms." It does not deny the competency of the high contracting parties to provide for the exercise of a wider jurisdiction by appropriate terms in a treaty. And that is precisely what has been done here. The unequivocal terms employed in the present protocol were manifestly chosen to confer jurisdiction of all claims owned (on February 17, 1903) by citizens of the United States against the Republic of Venezuela presented to the Commission by the Department of State of the United States or its legation at Caracas. Under these treaty terms,

---

[a] See p. 117.

[b] See Opinions U. S. and Venezuelan Claims Commission, p. 85; Moore's Arbitrations, 2348; affirmed, see note same page.

the key to such a jurisdictional question as that under consideration is the ownership of the claim by a citizen of the United States of America on the date the protocol was signed.

The present claim, together with other assets of the Orinoco Shipping and Trading Company (Limited), was acquired by valid deed of assignment by the Orinoco Steamship Company, a citizen of the United States, on April 1, 1902, long prior to the signing of the protocol, and is therefore clearly within the jurisdiction of this Commission.

Pursuant to the requirements of the convention, the Commissioners and the umpire, before assuming the functions of their office took a solemn oath carefully to examine and impartially to decide according to justice and the provisions of the convention all claims submitted to them. Undoubtedly the first question to be determined in relation to each claim presented is whether or not it comes within the terms of the treaty. If it does, the jurisdiction of the Commission attaches.

> Jurisdiction is the power to hear and determine a cause; it is coram judice whenever a case is presented which brings this power into action. (United States *v.* Arredondo, 6 Pet., 691.)

Thenceforward the Commission is directed by the protocol and is bound by its oath carefully to examine and impartially to decide in conformity with the principles of justice and the rules of equity all questions arising in the claim, and its decision is declared to be final and conclusive.

The jurisdiction exercised by this Commission is derived from a solemn compact between independent nations. It supersedes all other jurisdictions in respect of all matters properly within its scope. It can not be limited or defeated by any prior agreement of the parties litigant to refer their contentions to the local tribunals. Local jurisdiction is displaced by international arbitration; private agreement is superseded by public law or treaty.

As to every claim fairly within the treaty terms, therefore, the functions of this Commission, under its fundamental law and under its oath, are not fulfilled until to its careful examination there is added an impartial decision upon its merits. It can not deny the benefit of its jurisdiction to any claimant in whose behalf the high contracting parties have provided this international tribunal. Jurisdiction assumed, some decision, some final and conclusive action in the exercise of its judicial power, is incumbent upon the Commission. Mr. Commissioner Gore, in the case of the *Betsy*, before the United States and British Commission of 1794, well said:

> To refrain from acting, when our duty calls us to act, is as wrong as to act where we have no authority. We owe it to the respective Governments to refuse a decision in cases not submitted to us; we are under equal obligation to decide on those cases that are within the submission. (Moore's Arbitrations, 2290.)

Finally the protocol imposes upon this tribunal the duty of deciding all claims "upon a basis of absolute equity, without regard to objections of a technical nature, or of the provisions of local legislation." Clearly the high contracting parties had in view the substance and not the shadow of justice. They sought to make the remedies to be afforded by the Commission dependent not upon the niceties of legal refinement, but upon the very right of the case. The vital question in this, as in every other claim before this tribunal, is whether and to what extent citizens of the United States of America have suffered loss or injury; and whether and to what extent the Government of Venezuela is responsible therefor.

GRISANTI, *Commissioner* (claim referred to umpire):

The Orinoco Steamship Company (Limited) demands payment of the Government of Venezuela for four claims, as follows:

First. For $1,209,701.05, which sum the claimant company reckons as due for damages and losses caused by the Executive decree of October 5, 1900, said decree having, as the company affirms, annulled its contract-concession celebrated on May 26, 1894. The company deems as a reasonable value of the contract $82,432.78 per annum.

Second. For $147,638.79, at which the claimant company estimates the damages and losses sustained during the last revolution, including services rendered to the Government of the Republic.

Third. For 100,000 bolivars, or $19,219.19, overdue on account of the transaction celebrated on May 10, 1900.

Fourth. For $25,000 for counsel fees and expenses incurred in carrying out said claims.

The aforementioned claims are held by the Orinoco Steamship Company, a corporation of American citizenship, organized and existing under and pursuant to the provision of an act of the legislature of the State of New Jersey as assignee and successor of the Orinoco Shipping and Trading Company (Limited), of English nationality, organized in conformity with the respective laws of Great Britain.

And, in fact, it has always been the Orinoco Shipping and Trading Company (Limited), which has dealt and contracted with the Government of Venezuela, as evidenced by the documents and papers relating thereto. In case the aforementioned claims be considered just and correct, the rights from which they arise were originally invested in the juridical character (persona jurídica) of the Orinoco Shipping and Trading Company (Limited); and its claims are for the first time presented to the Mixed Commission by and on behalf of the Orinoco Steamship Company, as its assignee and successor, by virtue of an assignment and transfer, which appears in Exhibit No. 3 annexed to the memorial in pages 51 to 59 of the same, and in the reference to which assignment we shall presently make some remarks.

Before stating an opinion in regard to the grounds of said claims, the Venezuelan Commissioner holds that this Commission has no jurisdiction to entertain them. Said objection was made by the honorable agent for Venezuela prior to discussing the claims in themselves, and as the Venezuelan Commissioner considers such objection perfectly well founded he adheres to it and will furthermore state the powerful reasons on which he considers said objection to be founded.

It is a principle of international law, universally admitted and practiced, that for collecting a claim protection can only be tendered by the Government of the nation belonging to the claimant who originally acquired the right to claim, or in other words, that an international claim must be held by the person who has retained his own citizenship since said claim arose up to the date of its final settlement, and that only the government of such person's country is entitled to demand payment for the same, acting on behalf of the claimant. Furthermore, the original owner of the claims we are analyzing was the Orinoco Shipping and Trading Company (Limited), an English company, and that which demands the payment is the Orinoco Steamship Company (Limited), an American company; and as claims do not change nationality for the mere fact of their future owners having a different citizenship, it is as clear as daylight that this Venezuelan-

American Mixed Commission has no jurisdiction for entertaining said claims. The doctrine which I hold has also been sustained by important decisions awarded by international arbitrations.

Albino Abbiatti applied to the Venezuelan-American Mixed Commission of 1890, claiming to be paid several amounts which in his opinion the Government of Venezuela owed him. The acts alleged as the grounds for the claims took place in 1863 and 1864, at which time Abbiatti was an Italian subject, and it appears that subsequently, in 1866, he became a United States citizen. The Commission disallowed the claim, declaring its want of jurisdiction to entertain said claim for the following reasons:

Has the claimant, then, not having been a citizen of the United States at the time of the occurrences complained of, a standing here? The question is a jurisdictional one. The treaty provides: "All claims on the part of corporations, companies, or individuals, citizens of the United States, upon the Government of Venezuela * * * shall be submitted to a new commission, etc." Citizens when? In claims like this they must have been citizens at least when the claims arose. Such is the settled doctrine. The plaintiff State is not a claim agent. As observed elsewhere, the infliction of a wrong upon a state's own citizen is an injury to it, and in securing redress it acts in discharge of its own obligations and, in a sense, in its own interest. This is the key—subject, of course, to treaty terms—for the determination of such jurisdictional questions: Was the plaintiff State injured? It was not, where the person wronged was at the time a citizen of another state, although afterwards becoming its own citizen. The injury there was to the other state. Naturalization transfers allegiance, but not existing state obligations. Abbiatti could not impose upon the United States, by becoming its citizen Italy's existing duty toward him. This is not a case of uncompleted wrong at the time of citizenship, or of one continuous in its nature.

The Commission has no jurisdiction of the claim for want of required citizenship, and it is therefore dismissed. (Opinions United States and Venezuelan Claims Commission, 1890. Claim of Albino Abbiatti versus The Republic of Venezuela, p. 84.) [a]

In the case mentioned Abbiatti had always owned the claim; but as he was an Italian subject when the damage occurred, the Commission declared it had no jurisdiction to entertain said claim, notwithstanding that at the time of applying to the Commission he had become a citizen of the United States.

Article 1 of the protocol signed at Washington on February 17 of the current year says, textually, as follows:

All claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the Commission hereinafter named by the Department of State of the United States or its legation at Caracas, shall be examined and decided by a mixed commission, etc. [b]

Owned when? we beg to ask, in our turn, as in the above inserted decision. Owned ab initio; that is to say, owned since the moment when the right arose up to the moment of applying with it to this Mixed Commission. The verb "to own" means to possess, and as used in the protocol signifies "being the original proprietor;" therefore it will not suffice that the claim be possessed by a citizen of the United States at the time the protocol was signed; the jurisdiction of this Commission requires that the right should have arisen in the citizen of the United States and that said citizen shall never have failed to be the owner of such a right. Thus and thus only could the Government of the United States protect the claimant company; thus, and on such conditions alone, would this Commission have jurisdiction to entertain said claims.

If the clause, "All claims owned by citizens of the United States of America," etc., were considered doubtful, and consequently should

[a] Moore's Arbitrations, p. 2347. [b] See p. 1.

require interpretation, it ought undoubtedly to be given in accordance with the aforementioned universal principle—the basis of this statement—and not in opposition to it. Derogation of a principle of law in a judicial document has to be most clearly expressed; otherwise, the principle prevails, and the protocol must be interpreted accordingly.

While in some of the earlier cases the decisions as to what constituted citizenship within the meaning of the convention were exceptional, it was uniformly held that such citizenship was necessary when the claim was presented as well when it arose. Numerous claims were dismissed on the ground that the claimant was not a citizen when the claim arose. The assignment of a claim to an American citizen was held not to give the Commission jurisdiction.

An American woman who was married in July, 1861, to a British subject in Mexico was held not to be competent to appear before the Commission as a claimant in respect of damage done by the Mexican authorities in November, 1861, to the estate of her former husband, though her second husband had in 1866 become a citizen of the United States by naturalization. On the other hand, where the nationality of the owner of a claim, originally American or Mexican, had for any cause changed, it was held that the claim could not be entertained. Thus, where the ancestor, who was the original owner, had died, it was held that the heir could not appear as a claimant unless his nationality was the same as that of his ancestor. The person who had the "right to the award" must, it was further held, be considered as the "real claimant" by the Commission, and, whoever he might be, must "prove himself to be a citizen" of the government by which the claim was presented. (Moore's International Arbitrations, vol. 2, p. 1353.)[a]

In the memorial (No. 4) it is affirmed that 99 per cent of the total capital stock of The Orinoco Shipping and Trading Company (Limited) was owned by citizens of the United States of America, but this circumstance, even if it were proved, does not deprive said company of its British nationality, on account of its being organized, according to the referred-to memorial, under the English companies acts of 1862 to 1893 and duly registered in the office of the register of joint stock companies, London, on the 14th of July, 1898. The fact is that limited companies owe their existence to the law in conformity to which they have been organized, and consequently their nationality can be no other than that of said law. The conversion of said company, which is English, into the present claimant company, which is North American, can have no retroactive effect in giving this tribunal jurisdiction for entertaining claims which were originally owned by the first-mentioned company, as that would be to overthrow or infringe fundamental principles.

Naturalization not retroactive.—Without discussing here the theory about the retroactive effect of naturalization for certain purposes, I believe it can be safely denied in the odious matter of injuries and damages. A government may resent an indignity or injustice done to one of its subjects, but it would be absurd to open an asylum to all who have, or believe they have, received some injury or damage at the hands of any existing government, to come and be naturalized for the effect of obtaining redress for all their grievances. (Moore, vol. 3, p. 2483.)

The three quotations inserted hold and sanction the principle that, in order that the claimant might allege his rights before a mixed claims commission organized by the government of his country and that of the owing nation, it was necessary that the claim always belonged to him and that he should never have changed his nationality. And this principle demands that this Commission should declare its want of jurisdiction, whether the two companies be considered as different juridical characters (personas jurídicas) and that the claimant is a successor of the other, or whether they be considered as one and the same, having changed nationality.

---

[a] See also ibid., pp. 2334, 2753, and infra (Corvaïa case), p. 782.

I now beg to refer to another matter—to the analysis of the judicial value of the deed of assignment.

In the first number of the exhibit "the Orinoco Shipping and Trading Company" appears selling to "the Orinoco Steamship Company," which is the claimant, the nine steamships named, respectively, *Bolívar*, *Manzanares*, *Delta*, *Apure*, *Guanare*, *Socorro*, *Masparro*, *Héroe*, and *Morganito*. These steamships were destined for coastal service, or cabotage, some to navigate the rivers Guanare, Cojedes, Portuguesa, and Masparro from Ciudad Bolivar up to the mouth of the Uribante River (Olachea contract of June 27, 1891), and others to navigate between said Ciudad Bolívar and Maracaibo, and to call at the ports of La Vela, Puerto Cabello, La Guaira, Guanta, Puerto Sucre, and Carúpano (Grell contract, June 8, 1894). This line was granted the option of calling at the ports of Curaçao and Trinidad.

While the Government fixes definitely the transshipment ports for merchandise from abroad, and while they are making the necessary installations. (Contract, art. 12.)

However, the coastal trade can only be carried on by ships of Venezuelan nationality, in conformity with article 1, Law XVIII, of the Financial Code, which provides that—

Internal maritime trade of cabotage or coastal service is that which is carried on between the open ports of Venezuela and other parts of the continent, as well as between the banks of its lakes and rivers, in national ships, whether laden with foreign merchandise for which duties have been paid or with native goods or productions. (Comercio de Cabotaje, p. 87.)

And if we further add that the steamers were obliged to navigate under the Venezuelan flag (art. 2 of the Grell contract), as in fact they did, the result is that said steamers are Venezuelan by nationalization, wherefore the assignment of said steamers alleged by the Orinoco Shipping and Trading Company (Limited) to the claimant company is absolutely void and of no value, owing to the fact that the stipulations provided by the Venezuelan law (herewith annexed) for the validity of such an assignment were not fulfilled.

Law XXXIII (Financial Code).

ON THE NATIONALIZATION OF SHIPS.

ART. 1. The following alone will be held as national ships:
First. * * *
Second. * * *
Third. * * *
Fourth. Those nationalized according to law.

ART. 6. * * * The guaranty given for the proper use of the flag must be to the satisfaction of the custom-house. The property deed must be registered at the office of the place where the purchase takes place, and if such purchase is made in a foreign country a certificate of the same, signed by the Venezuelan consul and by the harbor master, shall have to be sent, drawn on duly stamped paper.

ART. 12. When a ship, or an interest therein, is to be assigned, a new patent must be obtained by the assignee, after having presented the new title deeds to the custom-house and receiving therefrom the former patent, stating measurements and tonnage therein contained, in order to obtain said patent.

The assignment of the aforementioned steamer is, as to the Government of Venezuela, void and of no value or effect whatever.

In Exhibit No. 2 "the Orinoco Shipping and Trading Company (Limited)" appears assigning several immovable properties situated in the Territorio Federal Amazonas of the Republic of Venezuela to the claimant company, and the title deed has not been registered at the

subregister office of said Territory, as prescribed by the Venezuelan Civil Code in the following provisions:

ART. 1883. Registration must be made at the proper office of the department, district, or canton where the immovable property which has caused the deed is situated.

ART. 1888. In addition to those deeds which, by special decree, are subject to the formalities of registration, the following must be registered:

First. All acts between living beings, due to gratuitous, onerous, or assignment title deeds of immovable or other property or rights susceptible of hypothecation.

In Exhibit No. 3, the Orinoco Shipping and Trading Company (Limited) appears assigning the Olachea contract of June 27, 1891, and the Grell contract of June 8, 1894. In assigning the first of these the approval of the Venezuelan Government was not obtained, either before or after, thereby infringing the following provision:

This contract may be transferred wholly or in part to any other person or corporation upon previous approval of the National Government.

In assigning the second the stipulation provided in article 13 of giving previous notice to the Government was infringed. If any argument could be made in regard to the annulment of the latter assignment, there is no doubt whatever in regard to the annulment of the former, whereas in the foregoing provision the Government reserves the right of being a contracting party in the assignment, and consequently said assignment, without the previous consent of the Government, is devoid of judicial efficacy.

The assignment of those contracts is, therefore, of no value for the Government of Venezuela.

The fifth paragraph of the same refers to the assignment which "the Orinoco Steamship and Trading Company (Limited)" intended to make to "the Orinoco Steamship Company" of all claims and demands existing in favor of the party of the first part, either against the Republic of Venezuela or against any individuals, firms, or corporations. This transfer of credits, which are not specified nor even declared, and which has not been notified to the Government, is absolutely irregular, and lacks judicial efficacy with regard to all parties except the assignor and assignee, in conformity with article 1496 of the Civil Code, which provides as follows:

An assignee has no rights against third parties until after notice of the assignment has been given to the debtor, or when said debtor has agreed to said assignment.

The foregoing article is, in substance, identical to article 1690 of the French Civil Code, and in reference thereto Baudry-Lacantinerie says that—

Les formalités prescrites par l'art. 1690 ont pour but de donner á la cession une certaine publicité, et c'est pour ce motif que la loi fait de leur accomplissement une condition de l'investiture du cessionnaire á l'égard des tiers. Les tiers sont reputés ignorer la cession, tant qu'elle n'a pas été rendue publique par la signification du transport ou par l'acceptation authentique du cédé; voilà pourquoi elle ne leur devient opposable qu'à date de l'accomplissement de l'une ou de l'autre de ces formalités. (Précis du Droit Civil. Tome troisième, p. 394, numero 624.)

Quelles sont les personnes que l'article 1690 désigne sous le nom de tiers, et à l'égard desquelles le cessionnaire n'est saisi que par la notification ou l'acceptation authentique du transport? Ce sont tous ceux qui n'ont pas été parties à la cession et qui ont un intérêt légitime à la connaître et à la contester, c'est-à-dire: 1. le cédé; 2. tous ceux qui ont acquis du chef du cédant des droits sur la créanciers chirographaires du cédant.

1. *Le débiteur cédé.*—Jusqu'à ce que le transport lui ait été notifié ou qu'il l'ait accepté, le débiteur cédé a le droit de considérer le cédant comme étant le véritable titulaire de la créance. La loi nous fournit trois applications de ce principe. (Baudry-Lacantinerie, work and vol. quoted, p. 395. See also Laurent, "Principes de Droit Civil," vol. 24, p. 472.)

I do not expect that the foregoing arguments will be contested, having recourse to the following provision of the protocol:

> The Commissioners, or in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation. [a]

If such a broad sense were given to this clause in regard to all cases as to bar any consideration for Venezuelan law, it would not only be absurd, but monstrous. Such, however, can not be the case. How could a claim possibly be disallowed on the grounds of the claimant being a Venezuelan citizen without invoking the Venezuelan law, which bestows upon him said citizenship? How in certain commissions could Venezuela have been exempted from having to pay for damages caused by revolutionists if the judicial principles which establish such exemption had not been pleaded? Said clause provides that no regard shall be had to objections of a technical nature, or of the provisions of local legislation, whenever such objections impair principles of equity, but when, in compliance with said principles, to disregard those objections would be to overthrow equity itself, and equity has to be the basis for all the decisions of this Commission. In the present instance conformity exists between the one and the others. And in merely adding that the majority of the cited provisions are in reference to contracts, it is understood that their basis has been equity and not rigorous law. On the other hand, if this Commission were to decide upon paying an award for a claim which the claimant company is not properly entitled to, through not being the owner thereof, it would be a contention against the precepts of equity.

In view, therefore, of the substantial irregularities of the deed of assignment and transfer, the Government of Venezuela has a perfect right to consider "the Orinoco Shipping and Trading Company (Limited)" as the sole owner of the claims analyzed, and whereas said company is of British nationality, this Venezuelan-American Mixed Commission has no jurisdiction to entertain the claim mentioned.

The incompetency of this Commission has been perfectly established. I shall now analyze the claims themselves. The Orinoco Steamship Company holds that the Executive decree promulgated on October 5, 1900, allowing the free navigation of the Macareo and Pedernales channels, annulled its contract concession of May 26, 1894, which contract the claimant company considered as granting it the exclusive right to carry on foreign trade through said channels. The company states as follows:

> Since said 16th day of December, A. D. 1901, notwithstanding the binding contract and agreement between the United States of Venezuela and the Orinoco Shipping and Trading Company (Limited) and your memorialist as assignee of said company, to the contrary, said United States of Venezuela, acting through its duly constituted officials, has authorized and permitted said Macareo and Pedernales channels of the river Orinoco to be used and navigated by vessels engaged in foreign trade other than those belonging to your memorialists or its predecessors in interest, and has thus enabled said vessels to do much of the business and to obtain the profits therefrom which, under the terms of said contract-concession of June 8, 1894, and the extension thereof of May 10, 1900, should have been done and obtained solely by your memorialist or its said predecessor in interest, and much of said business will continue to be done and the profits derivable therefrom will continue to be claimed and absorbed by persons and companies other than your memorialists, to its great detriment and damage. (Memorial, p. 106.)

[a] Page 2.

Let us state the facts such as they appear in the respective documents.

On July 1, 1893, the Executive power issued a decree in order to prevent contraband which was carried on in the several bocas (mouths) of the river Orinoco, to wit:

ART. 1. Vessels engaged in foreign trade with Ciudad Bolívar shall be allowed to proceed only by way of the Boca Grande of the river Orinoco; the Macareo and Pedernales channels being reserved for the coastal service, navigation by the other channels of the said river being absolutely prohibited.

On May 26, 1894, the Executive power entered into a contract with Mr. Ellis Grell, represented by his attorney, Mr. Manuel Antonio Sanchez, wherein the contractor undertook to establish and maintain in force navigation by steamers between Ciudad Bolívar and Maracaibo in such manner that at least one journey per fortnight be made, touching at the ports of La Vela, Puerto Cabello, La Guaira, Guanta, Puerto Sucre, and Carúpano. Article 12 of this contract stipulates as follows:

While the Government fixes definitely the transshipment ports for merchandise from abroad, and while they are making the necessary installations, the steamers of this line shall be allowed to call at the ports of Curaçao and Trinidad and any one of the steamers leaving Trinidad may also navigate by the channels of the Macareo and Pedernales of the river Orinoco in conformity with the formalities which by special resolution may be imposed by the minister of finance in order to prevent contraband and to safeguard fiscal interests; to all which conditions the contractor agrees beforehand.

On October 5, 1900, the national Executive promulgated the following decree:

ARTICLE I. The decree of the 1st of July, 1893, which prohibited the free navigation of the Macareo, Pedernales, and other navigable waterways of the river Orinoco is abolished.

Did the 1894 contract grant the Orinoco Shipping and Trading Company (Limited) an exclusive privilege to engage in foreign trade with the use of said Macareo and Pedernales channels? The perusal of article 12 above referred to will suffice without the least hesitation to answer this question negatively. The fact is that the company's contract-concession is for establishing the inward trade between the ports of the Republic, from Ciudad Bolívar to Maracaibo, and the company's steamers were only granted a temporary permission to call at Curaçao and Trinidad, *while the Government fixed definitely the transshipment ports for merchandise from abroad, and while they were making the necessary installations.*

It would be necessary to overthrow the most rudimental laws of logic in order to hold that a line of steamers established to engage in coastal trade or cabotage, navigating on the Macareo and Pedernales channels, which are free from internal navigation, should have the privilege of engaging in foreign trade through the mentioned channels. The decree of July 1 of 1893, promulgated with a view to prevent contraband in the channels of the river Orinoco and on the coast of Paria, is not a stipulation of the contract concession of the Orinoco Shipping and Trading Company (Limited), and therefore the Government of Venezuela could willingly abolish it, as, in fact, it did abolish it on October 5, 1900. Neither is it reasonable to suppose that the Government at the time of celebrating the referred-to contract alienated its legislative powers, which, owing to their nature, are inalien-

able. On the other hand, a privilege, being an exception to common law, must be most clearly established, otherwise it does not exist. Whenever interpretation is required by a contract it should be given in the sense of freedom, or, in other words, exclusive of privileges.

Furthermore, it is to be remarked that the Orinoco Shipping and Trading Company (Limited) has never complied with either of the two contracts—the Olachea and the Grell contracts—particularly as refers to the latter, as evidenced by a document issued by said company, whereof a copy is herewith presented, and as evidenced also by the memorial (No. 15).

On May 10, 1900, a settlement was agreed to by the minister of internal affairs and the Orinoco Shipping and Trading Company (Limited), in virtue whereof the Government undertook to pay the company 200,000 bolivars for all its claims prior to said convention, having forthwith paid said company 100,000 bolivars, and at the same time a resolution was issued by said minister granting the Grell contract (May 26, 1894) a further extension of six years.

The company holds that the decree of October 5, 1900, annulled its contract and also annihilated the above-mentioned prorogation, and that, as the concession of said prorogation had been the principal basis of the settlement for the company to reduce its credits to 200,000 bolivars, said credits now arise in their original amount.

It has already been proved that the referred-to Executive decree of October 5, 1900, did not annul the Grell contract, and this will suffice to evidence the unreasonableness of such contention. It must, furthermore, be added that the settlement and the concession for prorogation are not the same act, nor do they appear in the same document; therefore it can not be contended that the one is a condition or stipulation of the other. Besides, the concession for prorogation accounts for itself without having to relate it to the settlement; whereas in the resolution relative to said prorogation the company on its part renounced its right to the subsidy of 4,000 bolivars which the Government had assigned to it in article 7 of the contract.

The Venezuelan Commissioner considers that this Commission has no jurisdiction to entertain the claims deduced by the Orinoco Steamship Company, and that, in case it had, said claims ought to be disallowed.

BARGE, *Umpire:*

A difference of opinion arising between the Commissioners of the United States of North America and the United States of Venezuela, this case was duly referred to the umpire.

The umpire having fully taken into consideration the protocol, and also the documents, evidence, and arguments, and also likewise all other communications made by the two parties, and having impartially and carefully examined the same, has arrived at the decision embodied in the present award.

Whereas the Orinoco Steamship Company demands payment of the Government of Venezuela for four claims, as follows:

First. $1,209,700.05, as due for damages and losses caused by the Executive decree of October 5, 1900, having by this decree annulled a contract concession celebrated on May 26, 1894;

Second. 100,000 bolivars, or $19,219.19, overdue on account of a transaction celebrated on May 10, 1900;

Third. $147,638.79 for damages and losses sustained during the last revolution, including services rendered to the Government of the Republic;

Fourth. $25,000 for counsel fees and expenses incurred in carrying out said claims.

And whereas the jurisdiction of this Commission in this case is questioned, this question has in the first place to be investigated and decided.

Now, whereas the protocol (on which alone is based the right and the duty of this Commission to examine and decide "upon a basis of absolute equity, without regard to the objections of a technical nature or of the provisions of local legislation"), gives this Commission the right and imposes the duty to examine and decide "all claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the Commission by the Department of State of the United States or its legation at Caracas," it has to be examined how far this claim of the Orinoco Steamship Company possesses the essential qualities to fall under the jurisdiction of this Commission.

Now, whereas this claim against the Venezuelan Government was presented to this Commission by the Department of State of the United States of America through its agent;

And whereas it has not been settled by diplomatic agreement or arbitration;

And whereas the Orinoco Steamship Company, as evidence shows, is a corporation created and existing under and by virtue of the laws of the State of New Jersey, in the United States of America,

There only remains to be examined if the company owns the claim brought before the Commission.

Now, whereas almost all the items of this claim—at all events those originated before the 1st of April, 1902—are claims that "the Orinoco Shipping and Trading Company (Limited)," an English corporation, pretended to have against the Government of Venezuela;

And whereas on the said April 1, 1902, the said English company, for the sum of $1,000,000, sold and transferred to the American company, the claimant, "all its claims and demands either against the Government of Venezuela or against individuals, firms, and corporations," these claims from that date prima facie show themselves as owned by the claimant.

Whereas further on it is true that, according to the admitted and practiced rule of international law, in perfect accordance with the general principles of justice and perfect equity, claims do not change nationality by the fact that their consecutive owners have a different citizenship, because a state is not a claim agent, but only, as the infliction of a wrong upon its citizens is an injury to the state itself, it may secure redress for the injury done to its citizens, and not for the injury done to the citizens of another state.

Still, this rule may be overseen or even purposely set aside by a treaty.

And as the protocol does not speak—as is generally done in such cases—of all claims of citizens, etc., which would rightly be interpreted "all claims for injuries done to citizens, etc.," but uses the usual expression "all claims owned by citizens," it must be held that this uncommon expression was not used without a determined reason.

And whereas the evidence shows that the Department of State of the United States of America knew about these claims and took great interest in them (as is shown by the diplomatic correspondence about these claims presented to the Commission in behalf of claimant), and that the plenipotentiary of Venezuela, a short time before the signing of the protocol, in his character of United States envoy extraordinary and minister plenipotentiary, had corresponded with his Government about these claims, and that even as late as December 20, 1902, and January 27, 1903, one of the directors of the claimant company, J. van Vechten Olcott, wrote about these claims, in view of the event of arbitration, to the President of the United States of America, it is not to be accepted that the high contracting parties, anxious, as is shown by the history of the protocol, to set aside and to settle all questions about claims not yet settled between them, should have forgotten these very important claims when the protocol was redacted and signed.

And therefore it may safely be understood that it was the aim of the high contracting parties that claims such as these, being at the moment of the signing of the protocol *owned* by citizens of the United States of North America, should fall under the jurisdiction of the Commission instituted to investigate and decide upon the claims the high contracting parties wished to see settled.

And therefore the jurisdiction of this Commission to investigate and decide claims owned by citizens of the United States of North America at the moment of the signing of the protocol has to be recognized, without prejudice naturally of the judicial power of the Commission, and its duty to decide upon a basis of absolute equity when judging about the rights the transfer of the ownership might give to claimant against third parties.

For all which reasons the claims presented to this Commission on behalf of the American company, "the Orinoco Steamship Company," have to be investigated by this Commission and a decision has to be given as to the right of the claimant company to claim what it does claim, and as to the duty of the Venezuelan Government to grant to the claimant company what this company claims for.

Now, as the claimant company, in the first place, claims for $1,209,-701.05 as due for damages and losses caused by the Executive decree of October 5, 1900, this decree having annulled a contract concession celebrated on May 26, 1894, this contract-concession and this decree have to be examined, and it has to be investigated:

Whether this decree annulled the contract-concession;

Whether this annulment, when stated, caused damages and losses;

Whether the Government of Venezuela is liable for those damages and losses;

And, in the case of this liability being proved, whether it is to claimant the Government of Venezuela is liable to for these damages and losses.

And whereas the mentioned contract concession (a contract with Mr. Ellis Grell, transferred to the Venezuelan citizen, Manuel A. Sanchez, and approved by Congress of the United States of Venezuela on the 26th of May, 1894) reads as follows:

The Congress of the United States of Venezuela, in view of the contract celebrated in this city on the 17th of January of the present year between the minister of the interior of the United States of Venezuela, duly authorized by the chief of the national executive, on the one part, and on the other, Edgar Peter Ganteaume,

attorney for Ellis Grell, transferred to the citizen Manuel A. Sanchez, and the additional article of the same contract dated 16th of May instant, the tenor of which is as follows:

Dr. Feliciano Acevedo, minister of the interior of the United States of Venezuela, duly authorized by the chief of the national executive, on the one part, and Edgar Peter Ganteaume, attorney for Ellis Grell, and in the latter's name and representation, who is resident in Port of Spain, on the other part, and with the affirmative vote of the government council have celebrated a contract set out in the following articles:

ART. 1. Ellis Grell undertakes to establish and maintain in force navigation by steamers between Ciudad Bolívar and Maracaibo within the term of six months, reckoned from the date of this contract, and in such manner that at least one journey per fortnight be made, touching at the ports of La Vela, Puerto Cabello, La Guaira, Guanta, Puerto Sucre, and Carúpano, with power to extend the line to any duly established port of the Republic.

ART. 2. The steamers shall navigate under the Venezuelan flag.

ART. 3. The contractor undertakes to transport free of charge the packages of mails which may be placed on board the steamers by the authorities and merchants through the ordinary post-offices, the steamers thereby acquiring the character of mail steamers, and as such exonerated from all national dues.

ART. 4. The contractor shall draw up a tariff of passages and freights by agreement with the Government.

ART. 5. The company shall receive on board each steamer a Government employee with the character of fiscal postmaster, nominated by the minister of finance, with the object of looking after the proper treatment of the mails and other fiscal interests.

The company shall also transport public employees when in commission of the Government at half the price of the tariff, provided always that they produce an order signed by the minister of finance or by one of the presidents of the States. Military men on service and troops shall be carried for the fourth part of the tariff rates. The company undertakes also to carry gratis materials of war, and at half freights all other goods which may be shipped for account and by order of the National Government.

ART. 6. The General Government undertakes to concede to no other line of steamers any of the benefits, concessions, and exemptions contained in the present contract as compensation for the services which the company undertakes to render as well to national interests as those of private individuals.

ART. 7. The Government of Venezuela will pay to the contractor a monthly subsidy of four thousand bolivars (4,000) so long as the conditions of the present contract are duly carried out.

ART. 8. The National Government undertakes to exonerate from payment of import duties all machinery, tools, and accessories which may be imported for the use of the steamers and all other materials necessary for their repair, and also undertakes to permit the steamers to supply themselves with coal and provisions, etc., in the ports of Curaçao and Trinidad.

ART. 9. The company shall have the right to cut from the national forests wood for the construction of steamers or necessary buildings and for fuel for the steamers for the line.

ART. 10. The officers and crews of the steamers, as also the woodcutters and all other employees of the company, shall be exempt from military service, except in cases of international war.

ART. 11. The steamers of the company shall enjoy in all the ports of the Republic the same freedom and preferences by law established as are enjoyed by the steamers of lines established with fixed itinerary.

ART. 12. While the Government fixes definitely the transshipment ports for merchandise from abroad, and while they are making the necessary installations, the steamers of this line shall be allowed to call at the ports of Curaçao and Trinidad, and any one of the steamers leaving Trinidad may also navigate by the channels of the Macareo and Pedernales of the river Orinoco in conformity with the formalities which by special resolution may be imposed by the minister of finance, in order to prevent contraband and to safeguard fiscal interests; to all which conditions the contractor agrees beforehand.

ART. 13. This contract shall remain in force for fifteen years, reckoned from the date of its approvation, and may be transferred by the contractor to another person or corporation upon previous notice to the Government.

ART. 14. Disputes and controversies which may arise with regard to the interpretation or execution of this contract shall be resolved by the tribunals of the Republic

in accordance with the laws of the nation, and shall not in any case be considered as a motive for international reclamations.

Two copies of this contract of the same tenor and effect were made in Caracas the seventeenth day of January, 1894.

FELICIANO ACEVEDO.
EDWARD P. GANTEAUME.

ADDITIONAL ARTICLE. Between the minister of the interior of the United States of Venezuela and Citizen Manuel A. Sanchez, concessionnary of Mr. Ellis Grell, have agreed to modify the eighth article of the contract made on the 17th day of January of the present year for the coastal navigation between Ciudad Bolívar and Maracaibo on the following terms:

ART. 8. The Government undertakes to exonerate from payment of import duties the machinery, tools, and articles which may be imported for the steamers, and all other materials destined for the repairs of the steamers; while the Government fixes the points of transport and coaling ports, the contractor is hereby permitted to take coal and provisions for the crew in the ports of Curaçao and Trinidad.

Caracas, 10 May, 1894.

JOSÉ R. NUÑEZ.
M. A. SANCHEZ.

And whereas the mentioned executive decree of October 5th, 1900, reads as follows:

DECREE.

ARTICLE 1. The decree of the 1st of July, 1893, which prohibited the free navigation of the Macareo, Pedernales, and other navigable waterways of the river Orinoco is abolished.

ART. 2. The minister of interior relations is charged with the execution of the present decree.

Now, whereas in regard to the said contract it has to be remarked that in almost all arguments, documents, memorials, etc., presented on behalf of the claimant it is designated as a concession for the exclusive navigation of the Orinoco River by the Macareo or Pedernales channels, whilst in claimant's memorial it is even said that the chief—and indeed the only—value of this contract was the exclusive right to navigate the Macareo and Pedernales channels of the river Orinoco, and that, according to claimant, this concession of exclusive right was annulled by the aforesaid decree, and that it is for the losses that were the consequence of the annullment of this concession of exclusive right that damages were claimed.

The main question to be examined is whether the Venezuelan Government, by said contract, gave a concession for the exclusive navigation of said channels of said river, and whether this concession of exclusive navigation was annulled by said decree.

And whereas the contract shows that Ellis Grell (the original contractor) pledged himself to establish and maintain in force navigation by steamers between Ciudad Bolívar and Maracaibo, touching at the ports of La Vela, Puerto Cabello, La Guaira, Guanta, Puerto Sucre, and Carúpano, and to fulfill the conditions mentioned in articles 2, 3, 4, and 5, whilst the Venezuelan Government promised to grant to Grell the benefits, concessions, and exemptions contained in articles 7, 8, 9, 11, and 12, and in article 6 pledges itself to concede to no other line of steamers any of the benefits, concessions, and exemptions contained in the contract, the main object of the contract appears to be the assurance of a regular communication by steamer from Ciudad Bolívar to Maracaibo, touching the duly established Venezuelan ports between those two cities. For the navigation between these duly established ports no concession or permission was wanted, but in compensation to Grell's, engagement to establish and maintain in force for fifteen years

(art. 13) this communication, the Venezuelan Government accorded him some privileges which it undertook to grant to no other line of steamers.

Whereas, therefore, this contract in the whole does not show itself as a concession for exclusive navigation of any waters, but as a contract to establish a regular communication by steamers between the duly established principal ports of the Republic, the pretended concession for exclusive navigation of the Macareo and Pedernales channels must be sought in article 12 of the contract, the only article in the whole contract in which mention of them is made.

And whereas this article in the English version, in claimant's memorial, reads as follows:

> While the Government fixes definitely the transshipment ports for merchandise from abroad, and *while* they are making the necessary installations, the steamers of this line shall be allowed to call at the ports of Curaçao and Trinidad, and any one of the steamers leaving Trinidad may also navigate by the channels of the Macareo and Pedernales of the river Orinoco, etc.

It seems clear that the permission in this article—by which article the permission of navigating the said channels was not given to the claimant in general terms and for all its ships indiscriminately, but only for the ships leaving Trinidad—would only have force for the time till the Government would have fixed definitely the transshipment ports, *which it might do at any moment* and *till* the necessary installations were made, and not for the whole term of the contract, which, according to article 15, would remain in force for fifteen years.

And whereas this seems clear when reading the English version of the contract, as cited in the memorial, it seems, if possible, still more evident when reading the original Spanish text of this article, of which the above-mentioned English version gives not a quite correct translation, from which Spanish text reads as follows:

> ART. 12. Mientras el Gobierno fija definitivamente los puertos de trasbordo para las mercancías procedentes del extrangero, y mientras hace las necesarias instalaciones, las será permitido á los buques de la línea, tocar in los puertos de Curaçao y de Trinidad, pudiendo además navegar el vapor que salga de la última Antilla por los caños de Macareo y de Pedernales del Río Orinoco, previas las formalidades que por resolución especial dictará el Ministerio de Hacienda para impedir el contrabando en resguardo de los intereses fiscales; y á los cuales de antemano se somete el contratista.

(The words "el vapor que salga de la última Antilla," being given in the English version as "any one of the steamers leaving Trinidad.")

It can not be misunderstood that this "el vapor" is the steamer that had called at Trinidad according to the permission given for the special term that the "while" (mientras) would last; wherefore it seems impossible that the permission given in article 12 only for the time there would exist circumstances which the other party might change at any moment could ever have been the main object, and, as is stated in the memorial, "the chief and, indeed, only value" of a contract that was first made for the term of fifteen years, which term later on even was prolonged to twenty-one years.

And whereas therefore it can not be seen how this contract-concession for establishing and maintaining in force for fifteen years a communication between the duly established ports of Venezuela can be called a concession for the exclusive navigation of the said channels, when the permission to navigate these channels was only annexed to the permission to call at Trinidad and would end with that permission,

whilst the obligation to navigate between the ports of Venezuela from Ciudad Bolívar to Maracaibo would last.

And whereas, on the contrary, all the stipulations of the contract are quite clear when holding in view the purpose why it was given, viz, to establish and maintain in force a communication between the duly established ports of Venezuela, i. e., a regular coastal service by steamers.

Because to have and retain the character and the rights of ships bound to coastal service it was necessary that the ships should navigate under Venezuelan flag (art. 2), that they should have a special permission to call at Curaçao and Trinidad to supply themselves with coal and provisions (art. 8), which stipulation otherwise would seem without meaning and quite absurd, as no ship wants a special permission of any government to call at the ports of another government, and to call at the same foreign ports for transshipment while the government fixed definitely the transshipment ports (art. 12). In the same way during that time a special permission was necessary for the ship leaving Trinidad to hold and retain this one right of ships bound to coastal service—to navigate by the channels of Macareo and Pedernales—which special permission would not be necessitated any longer than the Government could fix definitely the Venezuelan ports that would serve as transshipment ports, because then they would per se enjoy the right of all ships bound to coastal service, viz, to navigate through the mentioned channels.

What is called a concession for exclusive navigation of the mentioned channels is shown to be nothing but a permission to navigate these channels as long as certain circumstances should exist.

And whereas, therefore, the contract approved by decree of the 8th of June, 1894, never was a concession for the exclusive navigation of said channels of the Orinoco; and whereas the decree which reopened these channels for free navigation could not annul a contract that never existed;

All damages claimed for the annulling of a concession for exclusive navigation of the Macareo and Pedernales channels of the Orinoco River must be disallowed.

Now, whereas it might be asked, if the permission to navigate by those channels, given to the steamer that on its coastal trip left Trinidad, was not one of the "benefits, concessions, and exemptions" that the Government in article 6 promised not to concede to any other line of steamers, it has not to be forgotten that in article 12 the Government did not give a general permission to navigate by the said channels, but that this whole article is a temporary measure taken to save the character and the rights of coastal service, to the service which was the object of this contract, during the time the Government had not definitely fixed the transshipment ports; and that it was not an elementary part of the concession, that would last as long as the concession itself, but a mere arrangement by which temporarily the right of vessels bound to costal service, viz, to navigate said channels, would be safeguarded for the vessel that left Trinidad as long as the vessels of this service would be obliged to call at this island, and that therefore the benefit and the exemption granted by this article was not *to navigate by said channels, but to hold the character and right of a coastal vessel, notwithstanding having called at the foreign port of Trinidad;* and as this privilege was not affected by the reopening of the channels to free navigation, and the Government by aforesaid decree did not

give any benefit, concession, and exemption granted to this concession to any other line of steamers, a claim for damages for the reopening of the channels based on article 6 can not be allowed. It may be that the concessionary and his successors thought that during all the twenty-one years of this concession the Government of Venezuela would not definitely fix the transshipment ports, nor reopen the channels to free navigation, and on those thoughts based a hope that was not fulfilled and formed a plan that did not succeed, but it would be a strange appliance of absolute equity to make the government that grants a concession liable for the not realized dreams and vanished "*chateaux en Espagne*" of inventors, promoters, solicitors, and purchasers of concessions.

But further on—even when it might be admitted that the reopening of the channels to free navigation might furnish a ground to base a claim on (quod non)—whilst investigating the right of claimant and the liability of the Venezuelan Government, it has not to be forgotten that, besides the already-mentioned articles, the contract has another article, viz, article 14, by which the concessionary pledged himself not to submit any dispute or controversies which might arise with regard to the interpretation or execution of this contract to any other tribunal but to the tribunals of the Republic, and in no case to consider these disputes and controversies a motive for international reclamation, which article, as the evidence shows, was repeatedly disregarded and trespassed upon by asking and urging the intervention of the English and United States Governments without ever going for a decision to the tribunals of Venezuela; and as the unwillingness to comply with this pledged duty is clearly shown by the fact that the English Government called party's attention to this article, and, quoting the article, added the following words, which certainly indicated the only just point of view from which such pledges should be regarded:

> Although the general international rights of His Majesty's Government are in no wise modified by the provisions of this document to which they were not a party, *the fact that the company, so far as lay in their power, deliberately contracted themselves out of every remedial recourse in case of dispute, except that which is specified in article 14 of the contract,* is undoubtedly an element to be taken into serious consideration when they subsequently appeal for the intervention of His Majesty's Government;

And whereas the force of this sentence is certainly in no wise weakened by the remark made against it on the side of the concessionary, that "the terms of article 14 of the contract have absolutely no connection whatever with the matter at issue, because 'no *doubt* or *controversy* has arisen with respect to the *interpretation and execution* of the contract,' but that what has happened is this, "that the Venezuelan Government has, by a most dishonest and cunningly devised trick, defrauded the company to the extent of *entirely nullifying* a concession which it had legally acquired at a very heavy cost," whereas, on the contrary, it is quite clear that the only question at issue was whether in article 12, in connection with article 6, a concession for exclusive navigation was given or not—ergo, a question of doubt and controversy about the interpretation;

And whereas the following words of the English Government addressed to the concessionary may well be considered:

> The company does not appear to have exhausted the legal remedies at their disposal before the ordinary tribunals of the country, and it would be contrary to the international practice for His Majesty's Government formally to intervene in their behalf through the diplomatic channel unless and until they should be in a position to show that they had exhausted their ordinary legal remedies with a result that a prima facie case of failure or denial of justice remained;

For whereas, if in general this is the only just standpoint from which to view the right to ask and to grant the means of diplomatic intervention and in consequence casu quo of arbitration, how much the more where the recourse to the tribunals of the country was formally pledged and the right to ask for intervention solemnly renounced by contract, and where this breach of promise was formally pointed to by the government whose intervention was asked;

Whereas, therefore, the question imposes itself, whether absolute equity ever would permit that a contract be willingly and purposely trespassed upon by one party in view to force its binding power on the other party;

And whereas it has to be admitted that, even if the trick to change a contract for regular coastal service into a concession for exclusive navigation succeeded (quod non), in the face of absolute equity the trick of making the same contract a chain for one party and a screw press for the other never can have success:

It must be concluded that article 14 of the contract disables the contracting parties to base a claim on this contract before any other tribunal than that which they have freely and deliberately chosen, and to parties in such a contract must be applied the words of the Hon. Mr. Finley, United States Commissioner in the Claims Commission of 1889: "So they have made their bed and so they must lie in it."[a]

But there is still more to consider.

For whereas it appears that the contract originally passed with Grell was legally transferred to Sanchez and later on to the English company the Orinoco Shipping and Trading Company (Limited), and on the 1st day of April, 1902, was sold by this company to the American company, the claimant;

But whereas article 13 of the contract says that it might be transferred to another person or corporation upon previous notice to the Government, while the evidence shows that this notice has not been previously (indeed ever) given; the condition on which the contract might be transferred not being fulfilled, the Orinoco Shipping and Trading Company (Limited), had no right to transfer it, and this transfer of the contract without previous notice must be regarded as null and utterly worthless;

Wherefore, even if the contract might give a ground to the above-examined claim to the Orinoco Shipping and Trading Company (Limited) (once more quod non), the claimant company as quite alien to the contract could certainly never base a claim on it.

For all which reasons every claim of the Orinoco Steamship Company against the Republic of the United States of Venezuela for the annulment of a concession for the exclusive navigation of the Macareo and Pedernales channels of the Orinoco has to be disallowed.

As for the claims for 100,000 bolivars, or $19,219.19, overdue on a transaction celebrated on May 10, 1900, between the Orinoco Shipping and Trading Company (Limited) and the Venezuelan Government:

Whereas these 100,000 bolivars are those mentioned in letter B, of article 2 of said contract, reading as follows:

(B) One hundred thousand bolivars, which shall be paid in accordance with such arrangements as the parties hereto may agree upon on the day stipulated in the

[a] Woodruff et al. v. Venezuela, Opinions United States and Venezuelan Claims Commission, 1890, p. 436, Moore's Arbitrations, p. 3564.

decree 23d of April, ultimo, relative to claims arising from damages caused during the war, or by other cause whatever;

And whereas nothing whatever of any arrangement, in accordance with which it was stipulated to pay, appears in the evidence before the Commission, it might be asked if, on the day this claim was filed, this indebtedness was proved compellable;

Whereas further on, in which ever way this question may be decided, the contract has an article 4, in which the contracting parties pledged themselves to the following: "All doubts and controversies which may arise with respect to the interpretation and execution of this contract shall be decided by the tribunals of Venezuela and in conformity with the laws of the Republic, without such mode of settlement being considered motive of international claims," while it is shown in the diplomatic correspondence brought before the Commission on behalf of claimant, that in December, 1902, a formal petition to make it an international claim was directed to the Government of the United States of America without the question having been brought before the tribunals of Venezuela, which fact certainly constitutes a flagrant breach of the contract on which the claim was based;

And whereas, in addition to everything that was said about such clauses here above it has to be considered what is the real meaning of such a stipulation;

And whereas when parties agree that doubts, disputes, and controversies shall only be decided by a certain designated third person, they implicitly agree to recognize that there properly shall be no claim from one party against the other, but for what is due as a result of a decision on any doubts, disputes, or controversies by that one designated third; for which reason, in addition to everything that was said already upon this question heretofore, in questions on claims based on a contract wherein such a stipulation is made, absolute equity does not allow to recognize such a claim between such parties before the conditions are realized, which in that contract they themselves made conditions sine qua non for the existence of a claim;

And whereas further on—even in case the contract did not contain such a clause, and that the arrangements, in accordance to which it was stipulated to pay were communicated to and proved before this Commission—it ought to be considered that if there existed here a recognized and compellable indebtedness, it would be a debt of the Government of Venezuela to the Orinoco Shipping and Trading Company;

For whereas it is true that evidence shows that on the 1st of April, 1902, all the credits of that company were transferred to the claimant company, it is not less true that, as shown by evidence, this transfer was never notified to the Government of Venezuela;

And whereas according to Venezuela law, in perfect accordance with the principles of justice and equity recognized and proclaimed in the codes of almost all civilized nations, such a transfer gives no right against the debtor when it was not notified to or accepted by that debtor;

And whereas here it can not be objected that according to the protocol no regard has to be taken of provisions of local legislation, because the words "the commissioners, or, in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature, or of the

provisions of local legislation," clearly have to be understood in the way that questions of technical nature or the provisions of local legislation should not be taken into regard when there were objections against the rules of absolute equity; for, in case of any other interpretation, the fulfilling of the task of this Commission would be an impossibility, as the question of American citizenship could never be proved without regard to the local legislation of the United States of America, and this being prohibited by the protocol, all claims would have to be disallowed, as the American citizenship of the claimant would not be proved; and as to technical questions it might then be maintained (as was done in one of the papers brought before this Commission on behalf of a claimant in one of the filed claims) that the question whether there was a proof that claimant had a right to a claim was a mere technical question;

And whereas, if the provisions of local legislation, far from being objections to the rules of absolute equity are quite in conformity with those rules, it would seem absolutely in contradiction with this equity not to apply its rules because they were recognized and proclaimed by the local legislation of Venezuela;

And whereas, the transfer of credits from "the Orinoco Shipping and Trading Company" to "the Orinoco Steamship Company" neither was notified to, or accepted by the Venezuelan Government, it can not give a right to a claim on behalf of the last-named company against the Government of Venezuela:

For all which reasons the claim of the Orinoco Steamship Campany (Limited) against the Government of Venezuela, based on the transaction of May 10, 1900, has to be disallowed.

In the next place the company claims $147,038.79, at which sum it estimates the damages and losses sustained during the last revolution, including services rendered to the Government of Venezuela.

Now, whereas this claim is for damages and losses suffered and for services rendered from June, 1900, whilst the existence of the company only dates from January 31, 1902, and the transfer of the credits of "the Orinoco Shipping and Trading Company (Limited)" to claimant took place on the 1st of April of this same year, it is clear from what heretofore was said about the transfer of these credits, that all items of this claim, based on obligations originated before said April 1, 1902, and claimed by claimant as indebtedness to the afore-named company and transferred to claimant on said April 1, have to be disallowed, as the transfer was never notified to or accepted by the Venezuelan Government. As to the items dating after the 1st of April, 1902, in the first place the claimant claims for detention and hire of the steamship *Masparro* from May 1 to September 18, 1902 (one hundred and forty-one days), at 100 pesos daily, equal to 14,100 pesos, and for detention and hire of the steamship *Socorro* from March 21 to November 5, 1902 (two hundred and twenty-nine days), 22,900 pesos, together 37,000 pesos, equal to $28,401.55;

And whereas it is proved by evidence that said steamers have been in service of the National Government for the time above stated;

And whereas nothing in the evidence shows any obligation on the part of the owners of the steamers to give this service gratis, even if it were in behalf of the commonwealth;

Whereas therefore a remuneration for that service is due to the owners of these steamers:

The Venezuelan Government owes a remuneration for that service to the owners of the steamers;

And whereas these steamers, by contract of April 1, 1902, were bought by claimant, and claimant therefore from that day was owner of the steamers:

This remuneration from that date is due to claimant.

And whereas in this case it matters not that the transfer of the steamers was not notified to the Venezuelan Government, as it was no transfer of a credit, but as the credit was born after the transfer, and as it was not in consequence of a contract between the Government and any particular person or company, but, as evidence shows, because the Government wanted the steamers' service in the interest of its cause against revolutionary forces; and whereas for this forced detention damages are due, those damages may be claimed by him who suffered them, in this case the owners of the steamers;

And whereas the argument of the Venezuelan Government, that it had counterclaims, can in no wise affect this claim, as those counter claims the Venezuelan Government alludes to, and which it pursues before the tribunals of the country, appear to be claims against the Orinoco Shipping and Trading Company, and not against claimant;

And whereas it matters not whether claimant, as the Government affirms and as evidence seems clearly to show, if not taking part in the revolution, at all events favored the revolutionary party, because the ships were not taken and confiscated as hostile ships, but were claimed by the Government, evidence shows, because it wanted them for the use of political interest, and after that use were returned to the owners: For all these reasons there is due to claimant from the side of the Venezuelan Government, a remuneration for the service of the steamers *Masparro* and *Socorro*, respectively, from May 1 to September 18, 1902 (one hundred and forty-one days), and from April 1 to November 5, 1902 (two hundred and nineteen days, together three hundred and sixty days);

And whereas, according to evidence since 1894 these steamers might be hired by the Government for the price of 400 bolivars, or 100 pesos, daily, this price seems a fair award for the forced detention:

Wherefore for the detention and use of the steamers *Masparro* and *Socorro* the Venezuelan Government owes to claimant 36,000 pesos, or $27,692.31.

Further on claimant claims $2,520.50 for repairs to the *Masparro* and $2,932.98 for repairs to the *Socorro*, necessitated, as claimant assures, by the ill usage of the vessels whilst in the hands of the Venezuelan Government.

Now, whereas evidence only shows that after being returned to claimant the steamers required repairs at this cost, but in no wise that those repairs were necessitated by ill usage on the side of the Government;

And whereas evidence does not show in what state they were received and in what state they were returned by the Government;

And whereas it is not proved that in consequence of this use by the Government they suffered more damages than those that are the consequence of common and lawful use during the time they were used by the Government, for which damages in case of hire the Government would not be responsible;

Where the price for which the steamers might be hired is allowed for the use, whilst no extraordinary damages are proved, equity will

not allow to declare the Venezuelan Government liable for these repairs:

Wherefore this item of the claim has to be disallowed.

Evidence in the next place shows that, on May 29 and May 31, 1902, 20 bags of rice, 10 barrels of potatoes, 10 barrels of onions, 16 tins of lard, and 2 tons of coal were delivered to the Venezuelan authorities on their demand on behalf of the Government forces, and for these provisions, as expropriation for public benefit, the Venezuelan Government will have to pay;

And whereas the prices that are claimed, viz, $6 for a bag of rice, and $5 for a barrel of potatoes, $7 for a barrel of onions, $3 for a tin of lard, and $10 for a ton of coal, when compared with the market prices at Caracas, do not seem unreasonable, the sum of $308 will have to be paid for them.

As for the further $106.40 claimed for provisions and ship stores, whereas there is given no proof of these provisions and stores being taken by or delivered to the Government, they can not be allowed.

For passages since April 1, 1902, claimant claims $224.62, and whereas evidence shows that all these passages were given on request of the Government, the claim has to be admitted, and whereas the prices charged are the same that formerly could be charged by the "Orinoco Shipping and Trading Company," these prices seemed equitable;

Wherefore, the Venezuelan Government will have to pay on this item the sum of $224.62.

As to the expenses caused by stoppage of the steamer *Bolívar* at San Felix when Ciudad Bolívar fell in the hands of the revolution—

Whereas this stoppage was necessitated in behalf of the defense of the Government against revolution;

And whereas no unlawful act was done nor any obligatory act was neglected by the Government, this stoppage has to be regarded, as every stoppage of commerce, industry, and communication during war and revolution, as a common calamity that must be commonly suffered and for which government can not be proclaimed liable;

Wherefore, this item of the claim has to be disallowed.

And now as for the claim of $61,336.20 for losses of revenue from June to November, 1902, caused by the blockade of the Orinoco;

Whereas a blockade is the occupation of a belligerent party on land and on sea of all the surroundings of a fortress, a port, a roadstead, and even all the coasts *of its enemy*, in order to prevent all communication with the exterior, with the right of "transient occupation" until it puts itself into real possession of that port of the hostile territory, the act of forbidding and preventing the entrance of a port or a river on its own territory in order to secure internal peace and to prevent communication with the place occupied by rebels or a revolutionary party can not properly be named a blockade, and would only be a blockade when the rebels and revolutionists were recognized as a belligerent party;

And whereas in absolute equity things should be judged by what they are and not by what they are called, such a prohibitive measure on its own territory can not be compared with the blockade of a hostile place, and therefore the same rules can not be adopted;

And whereas the right to open and close, as a sovereign on its own territory, certain harbors, ports, and rivers in order to prevent the trespassing of fiscal laws is not and could not be denied to the

Venezuelan Government, much less this right can be denied when used in defense not only of some fiscal rights, but in defense of the very existence of the Government;

And whereas the temporary closing of the Orinoco River (the so-called "blockade") in reality was only a prohibition to navigate that river in order to prevent communication with the revolutionists in Ciudad Bolívar and on the shores of the river, this lawful act by itself could never give a right to claims for damages to the ships that used to navigate the river;

But whereas claimant does not found the claim on the closure itself of the Orinoco River, but on the fact that, notwithstanding this prohibition, other ships were allowed to navigate its waters and were dispatched for their trips by the Venezuelan consul at Trinidad, while this was refused to claimant's ships, which fact in the brief on behalf of the claimant is called "unlawful discrimination in the affairs of neutrals," it must be considered that whereas the revolutionists were not recognized belligerents there can not properly here be spoken of "neutrals" and "the rights of neutrals;" but that

Whereas it here properly was a prohibition to navigate;

And whereas, where anything is prohibited, to him who held and used the right to prohibit can not be denied the right to permit in certain circumstances what as a rule is forbidden;

The Venezuelan Government, which prohibited the navigation of the Orinoco, could allow that navigation when it thought proper, and only evidence of unlawful discrimination, resulting in damages to third parties, could make this permission a basis for a claim to third parties;

Now, whereas the aim of this prohibitive measure was to crush the rebels and revolutionists, or at least to prevent their being enforced, of course the permission that exempted from the prohibition might always be given where the use of the permission, far from endangering the aim of the prohibition, would tend to that same aim, as, for instance, in the case that the permission were given to strengthen the governmental forces or to provide in the necessities of the loyal part of the population;

And whereas the inculpation of unlawful discrimination ought to be proved;

And whereas, on one side, it not only is not proved by evidence that the ships cleared by the Venezuelan consul during the period in question did not receive the permission to navigate the Orinoco in view of one of the aforesaid aims;

But whereas, on the other side, evidence, as was said before, shows that the Government had sufficient reasons to believe claimant, if not assisting the revolutionists, at least to be friendly and rather partial to them, it can not be recognized as a proof of unlawful discrimination that the Government, holding in view the aim of the prohibition and defending with all lawful measures its own existence, did not give to claimant the permission it thought fit to give to the above-mentioned ships;

And whereas therefore no unlawful act or culpable negligence on the part of the Venezuelan Government is proved that would make the Government liable for the damages claimant pretends to have suffered by the interruption of the navigation of the Orinoco River, this item of the claim has to be disallowed.

The last item of this claim is for $25,000, for counsel fees and expenses incurred in carrying out the above examined and decided claims;

But whereas the greater part of the items of the claim had to be disallowed;

And whereas in respect to those that were allowed it is in no way proved by evidence that they were presented to and refused by the Government of the Republic of the United States of Venezuela, and whereas therefore the necessity to incur those fees and further expenses in consequence of an unlawful act or culpable negligence of the Venezuelan Government is not proved, this item has, of course, to be disallowed.

For all which reasons the Venezuelan Government owes to claimant:

	United States gold.
For detention and use of the steamers *Masparro* and *Socorro*, 36,000 pesos, or	$27,692.31
For goods delivered for use of the Government	308.00
For passages	224.62
Total	28,224.93

While all the other items have to be disallowed.

APPENDIX TO THE CASE OF THE ORINOCO STEAMSHIP COMPANY.

MEMORIAL.

1. Your memorialist, the Orinoco Steamship Company, respectfully represents that it is a corporation duly created, organized and existing under and pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act concerning corporations (revision of 1896)," and the acts amendatory thereof and supplemental thereto, having its principal office in said State of New Jersey, at No. 83 Montgomery street, Jersey City, and a further office at No. 17 Battery place, in the city of New York, State of New York, both in the United States of America, and also having other offices at Port of Spain, Trinidad, British West Indies, and Ciudad Bolívar, Venezuela, and agents at other ports and places in Venezuela.

That its articles of incorporation were duly executed on the 31st day of January, 1902, and were recorded in the office of the secretary of state for the State of New Jersey on the 7th day of February, A. D. 1902.

Your memorialist, in its own right and as the successor and assignee of the Orinoco Shipping and Trading Company, Limited, is the owner of the claim or claims hereinafter set forth against the United States of Venezuela, and respectfully prays the Department of State of the United States of America to present such claim or claims to and press the same for settlement before the Mixed Commission provided for in the protocol of an agreement between the United States of America and the Republic of Venezuela, signed at Washington on the 17th day of February, 1903.

2. Your memorialist, among its other corporate powers, was duly authorized to acquire and take over as a going concern the business carried on by the Orinoco Shipping and Trading Company, Limited, of London, England, and all the assets and liabilities of the proprietors of that business owned, used, acquired, or incurred in connection therewith; and also to carry on the business of shipowners and carriers by land or water, wharfingers, transportation and forwarding agents, and warehousemen, and to purchase and own steamships, and to employ the same in the carriage of passengers, merchandise, and the mails; and also to purchase or otherwise acquire, without limit as to amount or location, real estate and property, with all interests and rights therein; and also to purchase or otherwise acquire concessions, grants, decrees, and privileges and to exercise the same, with full power to conduct its business not only in the States and Territories of the United States of America, but also in foreign countries; and also to keep such offices outside of the State of New Jersey as the necessities of the business required; and also to issue stock, bonds,

or other obligations in payment for property purchased or acquired. All of which corporate rights and powers, together with many others not herein enumerated, will more fully appear upon inspection of a copy of said articles of incorporation, duly certified copies of which have been heretofore filed in the United States Department of State and registered in the registry at Caracas, in Venezuela, and a copy whereof is annexed hereto and made a part hereof, marked Exhibit No. 1.[a]

3. The Orinoco Shipping and Trading Company, Limited, the predecessor in interest of your memorialist in certain of the claims hereinafter particularly specified, was a company limited by shares, organized under the English companies acts of 1862 to 1893, and duly registered in the office of the register of joint-stock companies, London, England, on the 14th day of July, 1898. Said Orinoco Shipping and Trading Company, Limited, was incorporated and organized, among other things, for the purpose of purchasing, leasing, or otherwise acquiring lands, buildings, and other property in the United States of Venezuela; the carrying on of the business of shipowners, carriers by land or water, wharfingers, lightermen, transportation and forwarding agents, and warehouse men; to purchase or otherwise acquire steamships, and to employ the same in the carriage of passengers, merchandise, and mails; to purchase or otherwise acquire and hold the share capital, or any part thereof, of any shipping company carrying on business in Venezuela or elsewhere in South America; to apply for, purchase, or otherwise acquire concessions, grants, decrees, and privileges, and to carry out and exercise the same; to carry on any other business, whether manufacturing or otherwise, which might be conveniently carried on with reference to any of the company's properties, and to do many and various other things and matters, all of which will more fully appear upon an inspection of the copy of the memorandum of association of said Orinoco Shipping and Trading Company, Limited, hereto annexed and made a part hereof, marked "Exhibit No. 2."[a]

4. Although said Orinoco Shipping and Trading Company, Limited, was organized as aforesaid under the English companies acts, nevertheless at least 99 per cent of its total capital stock and bonded indebtedness was subscribed and paid for, and at the time of the deed of assignment or transfer to the Orinoco Steamship Company, hereinbefore referred to, was owned by and at all intermediate times had been owned by native-born citizens of the United States of America; and the total capital stock of your memorialist, amounting to $1,000,000, par value, is at the present time and for a long time past has been owned absolutely by native-born citizens of the United States of America. The former owners of the entire capital stock of said Orinoco Shipping and Trading Company, Limited, with the exception of seven shares, of the par value of £1 each, held by the incorporators, were as follows:

Alfred B. Scott, J. Van Vechten Olcott, R. Morgan Olcott, all of whom are citizens of the State of New York, United States of America; and the owners of the entire capital stock of the Orinoco Steamship Company are as follows:

Alfred B. Scott, J. Van Vechten Olcott, R. Morgan Olcott, Levi S. Tenney, and Duncan B. Cannon, all of whom are likewise citizens of the State of New York, United States of America.

Besides its fully paid capital stock, your memorialist also has issued and has outstanding at the present time a bonded indebtedness of $500,000, secured by a deed of trust upon its steamers, properties, and other assets, which said bonded indebtedness is also owned entirely by citizens of the United States of America. A duly authenticated copy of the deed of trust given to secure the same, wherein the Continental Trust Company of the City of New York is trustee, executed at the city of New York, State of New York, on the 1st day of April, 1902, was registered in the official registry in Caracas, in the Republic of Venezuela, on the 16th day of April, A. D. 1903.

5. By virtue of the authority and powers conferred upon it by its articles of incorporation as aforesaid, your memorialist, as is evidenced by a deed of transfer and assignment made, entered into, and delivered on the 1st day of April, A. D. 1902, purchased, acquired, and took over from the Orinoco Shipping and Trading Company, Limited, of London, England, in consideration of the sum of $1,000,000, represented by the entire capital stock of your memorialist, and an agreement to pay and discharge all outstanding debentures, bills payable, loans, and other claims and demands justly due and owing by the said Orinoco Shipping and Trading Company, Limited, amounting to more than $300,000, all the steamships, lands, houses, and other improvements thereon, implements, tools, and machinery, and all other lands, tenements, and hereditaments or interests therein, and all franchises, concessions, and grants belonging to said Orinoco Shipping and Trading Company, Limited, together with all claims and demands then existing belonging to, in possession of, or in favor of said Orinoco Shipping and Trading Company against the Republic of Venezuela, or against any individuals, firms, or corporations, together with all other

[a] Exhibits not included in this publication.

estates, rights, titles, interests, properties, claims, and demands whatsoever of the said Orinoco Shipping and Trading Company, Limited, as will more fully appear by reference to a copy of said deed of transfer, annexed hereto and made a part hereof, marked Exhibit No. 3,[a] the property rights, privileges, etc., so acquired, purchased, and transferred being reasonably of a value in excess of the sum of $1,500,000.

6. Among other franchises and property rights of value so acquired by your memorialist was the exclusive right or franchise granted by the United States of Venezuela to transport goods, wares, and merchandise between the ports of Trinidad, British West Indies, and Ciudad Bolivar, Venezuela, through the Macareo and Pedernales channels of the river Orinoco, which franchise arose and was granted and came into the possession and ownership of the Orinoco Shipping and Trading Company, Limited, under the following circumstances and conditions, viz:

On the 1st day of July, A. D. 1893, Gen. Joaquín Crespo, then in possession of the executive power of the United States of Venezuela, issued his executive decree (Law No. 5605), in due form of law, decreeing as follows:

"ART. 1. Vessels engaged in foreign trade with Ciudad Bolivar shall be allowed to proceed only by way of the Boca Grande of the river Orinoco; the Macareo and Pedernales channels being reserved for the coastal service, navigation by the other channels of the said river being absolutely prohibited.

"ART. 2. In order that the commerce of Ciudad Bolívar shall suffer no interruption, permission is hereby granted only to those lines of steamers actually engaged in carrying on traffic by the Macareo and Pedernales channels; and in consideration of the maritime conditions of the steamers which compose the lines which do not permit of their navigating by the Boca Grande, this permission shall continue in force until the 31st of December next, a period which the Government considers sufficient to enable the proprietors of the said lines to modify their vessels so as to fit them for the navigation in conformity with the dispositions contained in this decree.

"ART. 3. The maritime custom-house of Pedernales is hereby suppressed, and the operations of cabotage shall be superintended by a subcustoms depot under the supervision of the customs of Ciudad Bolívar.

"ART. 4. The subcustoms depot of Manoa is transferred to the Puerto de Sacupana, which shall likewise be dependent upon the Aduana of Ciudad Bolívar.

"ART. 5. The ministers of the interior, of finance, and of war and marine shall be charged with the execution of this decree."

Which said executive decree was subsequently ratified and confirmed by the Congress of the United States of Venezuela, and later its validity and binding force was judicially recognized and declared by the high Federal court of Venezuela on the 14th day of August, A. D. 1894. (See annual memorial of the high Federal court to the Congress of Venezuela, 1895, Re George F. Carpenter and the Macareo Concession.)

7. Thereafter and on or about the 17th day of January, A. D. 1894, the minister of the interior of the United States of Venezuela, duly authorized thereunto by the chief of the executive, entered into a contract of navigation with one Edgar Peter Ganteaume, attorney for one Ellis Grell, which said contract, duly approved in all its parts by the Congress of the United States of Venezuela on the 26th day of May, A. D. 1894, was by President Crespo on the 8th day of June, A. D. 1894, ordered to be executed and its conditions observed, is in the words and figures following, to wit:

Legislative decree of the 8th of June, 1894, approving a contract with Mr. Ellis Grell, transferred to Citizen Manuel A. Sanchez.

The Congress of the U. S. of Venezuela, in view of the contract celebrated in this city on the 17th of January of the present year between the minister of the interior of the U. S. of Venezuela, duly authorized by the chief of the national executive, on the one part, and on the other, Edgar Peter Ganteaume, attorney for Ellis Grell, transferred to the citizen Manuel A. Sanchez, and the additional article of the same contract dated 10th of May instant, the tenor of which is as follows:

Dr. Feliciano Acovedo, minister of the interior of the U. S. of Venezuela, duly authorized by the chief of the national executive, on the one part, and Edgar Peter Ganteaume, attorney for Ellis Grell, and in the latter's name and representation, who is resident in Port of Spain, on the other part, and with the affirmative vote of the Government council, have celebrated a contract set out in the following articles:

ART. 1. Ellis Grell undertakes to establish and maintain in force navigation by steamers between Ciudad Bolívar and Maracaibo within the term of six months reckoned from the date of this contract, and in such manner that at least one journey per fortnight be made, touching at the ports of La Vela, Puerto Cabello, La Guira,

[a] Exhibits not included in this publication.

Guanta, Puerto Sucre, and Carúpano, with power to extend the line to any duly established port of the Republic.

ART. 2. The steamers shall navigate under the Venezuelan flag.

ART. 3. The contractor undertakes to transport free of charge the packages of mails which may be placed on board the steamers by the authorities and merchants through the ordinary post-offices; the steamers thereby acquiring the character of mail steamers and, as such, exonerated from all national dues.

ART. 4. The contractor shall draw up a tariff of passages and freights by agreement with the Government.

ART. 5. The company shall receive on board each steamer a Government employee with the character of fiscal (postmaster), nominated by the minister of finance, with the object of looking after the proper treatment of the mails and other fiscal interests.

The company shall also transport public employees when in commission of the Government at half the price of the tariff, provided always that they produce an order signed by the minister of finance or by one of the presidents of the States. Military men on service and troops shall be carried for the fourth part of the tariff rates. The company undertakes also to carry gratis materials of war, and at half freights all other goods which may be shipped for account and by order of the National Government.

ART. 6. The General Government undertakes to concede to no other line of steamers any of the benefits, concessions, and exemptions contained in the present contract as compensation for the services which the company undertakes to render as well to national interests as those of private individuals.

ART. 7. The Government of Venezuela will pay to the contractor a monthly subsidy of four thousand bolivars (4,000) so long as the conditions of the present contract are duly carried out.

ART. 8. The National Government undertakes to exonerate from payment of import duties all machinery, tools, and accessories which may be imported for the use of the steamers, and all other materials necessary for their repair, and also undertakes to permit the steamers to supply themselves with coal and provisions, &c., in the ports of Curaçao and Trinidad.

ART. 9. The company shall have the right to cut from the national forests wood for the construction of steamers or necessary buildings and for fuel for the steamers of the line.

ART. 10. The officers and crews of the steamers, as also the woodcutters and all other employees of the company, *shall be exempt from military service* except in cases of *international* war.

ART. 11. The steamers of the company shall enjoy in all the ports of the Republic the same freedom and preferences by law established as are enjoyed by the steamers of lines established with fixed itinerary.

ART. 12. While the Government fixes definitely the transshipment ports for merchandise from abroad, and while they are making the necessary installations, the steamers of this line shall be allowed to call at the ports of Curaçao and Trinidad, and any one of the steamers leaving Trinidad may also navigate by the channels of the Macareo and Pedernales of the River Orinoco in conformity with the formalities which by special resolution may be imposed by the minister of finance in order to prevent contraband and to safeguard fiscal interests; to all which conditions the contractor agrees beforehand.

ART. 13. This contract shall remain in force for fifteen years, reckoned from the date of its approbation, and may be transferred by the contractor to another person or corporation upon previous notice to the Government. The transfer shall not be made to any foreign government.

ART. 14. Disputes and controversies which may arise with regard to the interpretation or execution of this contract shall be resolved by the tribunals of the Republic in accordance with the laws of the nation, and shall not in any case be considered as a motive for international reclamations.

Two copies of this contract, of the same tenor and effect, were made in Caracas the seventeenth day of January, 1894.

SOLICIANO ACOVEDO.
EDWARD P. GANTEAUME.

ADDITIONAL ARTICLE. Between the minister of the interior of the U. S. of Venezuela and Citizen Manuel A. Sanchez, concessionary of Mr. Ellis Grell, have agreed to modify the eighth article of the contract, made on the 17th day of January of the present year, for the coastal navigation between Ciudad Bolívar and Maracaibo on the following terms:

ART. 8. The Government undertakes to exonerate from payment of import duties the machinery, tools, and articles which may be imported for the steamers, and all other materials destined for the repairs of the steamers; while the Government

fixes the points of transport and coaling ports, the contractor is hereby permitted to take coal and provisions for the crew in the ports of Curaçao and Trinidad.

Caracas, 10th May, 1894.

JOSE R. NUÑEZ.
M. A. SANCHEZ.

DECREE.

SOLE ARTICLE. The present contract is approved in all its parts.

Given in the palace of the Federal legislative corps, in Caracas, the 26th day of May, 1894, eighty-third year of the independence and thirty-sixth of the federation.

The president of the Senate,

VICENTE AMENGUAL.

The president of the Chamber of Deputies,

J. FRANCISCO CASTILLO.

The secretary of the Senate,

FRANCISCO PIMENTEL.

The secretary of the Chamber of Deputies,

J. A. ROSA.

Federal palace in Caracas, the 8th of June, 1894, the eighty-third year of the independence and thirty-sixth of the federation.

Let this contract be executed and its conditions observed.

JOAQUÍN CRESPO.

The minister of the interior,

JOSÉ R. NUÑEZ.

8. Said contract of concession, with all the rights and privileges thereunto appertaining, by duly executed transfers, after requisite previous notice had been given to the Government of Venezuela, came into the possession and under the control of the Compañía General Venezolana de Navegación, which company entered upon the performance of the various obligations imposed upon it as such transferee, and having provided itself with certain steam vessels, three in number, and other properties necessary to the business of a common carrier of passengers and freight, engaged in such business and continued to be engaged therein until about the 12th day of December, 1898, when the entire share capital of said Compañía General Venezolana de Navegación and the said contract of concession, steamers, and all other property and assets of said Compañía General Venezolana de Navegación were purchased by and transferred to the Orinoco Shipping and Trading Company, Limited, which association had been organized, among other things, for the purpose of acquiring the same and doing the business authorized to be done under the terms of said contract.

Said Orinoco Shipping and Trading Company (Limited) immediately thereafter entered upon the management, operation, and control of said contract of concession, and from time to time added to its fleet of steamships until they became ten in number, and purchased many other properties, stores, and the like, for the purpose of adding to its plant and of enabling it to increase and extend its business thereunder.

9. By an executive decree (No. 392) of October 18, 1898, emanating from the ministry of internal affairs and duly published, it was resolved as follows:

"The President of the Republic has disposed that the Orinoco Shipping and Trading Company (Limited) as soon as it shall have complied with the requisite formalities to establish the fact that it is the cessionary of the contract celebrated between the National Government and Ellis Grell on the 17th January, 1894, shall be granted the term of one year, reckoned from this date, for the establishment of the fortnightly navigation service between La Guaira and Maracaibo referred to in article 1 of the recited contract, during which time, however, the said company shall not be entitled to receive the subvention of four thousand bolivars stipulated in the said contract until the fortnightly service to which this resolution refers shall have been inaugurated.

"Let it be communicated and published.

"For the national executive: "Z. BELLO RODRIGUEZ."

And subsequently, by an executive decree of September 4, 1899, which was duly published in the Official Gazette of September 5, 1899, a further extension of six months, within which to establish said service, was granted, said decree being in words as follows (translation):

UNITED STATES OF VENEZUELA,
MINISTRY OF INTERNAL AFFAIRS, ADMINISTRATIVE DIRECTION,
Caracas, 4th September, 1899. (*89 and 41.*)

Having duly considered the petition which has been presented to this ministry by Citizen César Vicentini, as the representative of the Orinoco Shipping and Trading

Company (Limited), in which he solicits a prorogation of six months for the establishment of a fortnightly steamship service between La Guaira and Maracaibo in conformity with article 1 of the contract celebrated between the National Government and Ellis Grell on the 17th January, 1894; and considering the serious inconveniences and risks which all enterprises established in Venezuela have suffered in consequence of political disturbances during recent years, whereby the said company has found itself unable to comply with the obligations stipulated in the article of the said contract; and in view of the valuable and important services rendered to the National Government by the said company, the President of the Republic has sanctioned the following resolution:

Resolved, That the Orinoco Shipping and Trading Company (Limited) be conceded an extension of six months for the establishment of fortnightly navigation by steamer between La Guaira and Maracaibo in conformity with article 1 of the contract hereinabove recited.

Let it be communicated and published.

For the national executive:

Z. BELLO RODRIGUEZ.

10. In the meantime said Orinoco Shipping and Trading Company (Limited), having purchased outright the ships and other assets, including the book accounts, of the navigation company known as the "Orinoco Red Star Line," as well as the Compañía General Venezolana, above referred to, rendered to the Government of Venezuela and its various officials authorized to demand the same, services by transporting from place to place its officials, both civil, military, and naval, its troops and accouterments, war materials, and supplies, and other materials and supplies, belonging to or shipped for the account and on the order of the National Government, and charged for such services at rates much less than the regular rates prescribed in the company's tariffs; for or on account of which services and accounts neither said Orinoco Shipping and Trading Company (Limited) nor your memorialist has received any compensation from said Republic of Venezuela, except as hereinafter specified; and various outbreaks, insurrections, and revolts against the established Government of Venezuela or its authorities having broken out at various points and places in Venezuela, the officials of said established Government from time to time detained or seized the steamers of said company, together with the supplies of stores and cargo in course of shipment thereon, and made use of all thereof, and certain of said steamers either greatly damaged or totally destroyed, and said officials and the soldiers or others under their command or other bands of lawless men under the domination or subject to the control and supervision of said officials, officers, and soldiers, entered upon and into various properties, stores, offices, and warehouses belonging to said Orinoco Shipping and Trading Company (Limited), or your memorialist, and destroyed the same and the contents thereof, to their great damage. Detailed accounts of such detentions, seizures, breakings, and destructions, together with statements showing the amounts of moneys due for services rendered and damages sustained as aforesaid have heretofore been rendered to the proper officials of the Government of Venezuela, together with full proofs and vouchers necessary to substantiate the accuracy and justness thereof; and such accounts having been first fully and carefully examined and found to be correct, were accepted by said officials, and an agreement for the settlement thereof was duly entered into on the 10th day of May, A. D. 1900, which agreement for settlement has been but partially performed by said Government of Venezuela, and there is now due to your memorialist on account thereof the agreed sum of 100,000 bolivars in coined money, with interest thereon from said 10th day of May, A. D. 1900, besides other sums, either on account stated or by way of damages, for the neglect and refusal of the Government of Venezuela to adhere to and carry out said agreement of settlement solemnly entered into as aforesaid, as will presently be more fully set forth.

11. Prior to the 10th day of May, A. D. 1900, there was due and owing to the Orinoco Shipping and Trading Company (Limited), as the sole owner and assignee of the "Orinoco Red Star Line," the sum of 101,163.42 pesos venezolanos, equal at exchange 1.30 pesos per dollar to $77,818.01 for services rendered, the bills and vouchers for which were then and should be now in the possession and control of the Government of Venezuela.

There were also due and owing on said date from said Government to said Orinoco Shipping and Trading Company (Limited) further sums of money on account of services rendered or damages suffered, as per detailed statements rendered to the proper officials, with vouchers and proofs of payment accompanying the same (copy of all of which accounts has heretofore been filed in the United States Department of State and is respectfully prayed to be made a part of the diplomatic correspondence per-

taining to this claim), amounting to the sum of 619,752.27 pesos, equal at exchange 1.30 pesos per dollar to the sum of $476,732.50, or a total in United States currency of $554,550.51, on account of which there had been paid by the Government of which President Castro is and was then the official head the sum of $1,153.86 cash and salt bonds issued by the United States of Venezuela equal to $20,400 American currency, leaving a balance due and payable on said 10th day of June, 1900, of $532,996.85 American currency.

12. On said 10th day of May, A. D. 1900, the balance of $532,996.85 being then due from the United States of Venezuela to the Orinoco Shipping and Trading Company (Limited), as above stated, an agreement for the settlement thereof was effected and entered into by and between Richard Morgan Olcott, as managing director of the Orinoco Shipping and Trading Company (Limited), fully empowered to act in such connection, and Dr. Felix Quintero, minister of the interior of the United States of Venezuela, sufficiently authorized by the Supreme Chief of the Republic acting on behalf of the Republic of Venezuela, whereby it was agreed that in full settlement of the claims then accrued, due, and submitted, amounting as aforesaid to the sum of $554,550.51, there should be paid to the Orinoco Shipping and Trading Company (Limited), the sum of 200,000 bolivars in coined money, and the above-mentioned contract or concession of the exclusive right to navigate the Macareo and Pedernales channels of the Orinoco River should be prolonged for the period of six years to "be reckoned from the date upon which the term of years fixed by article 13 of the said contract expires"—that is to say, for six years to be reckoned from the 8th day of June, A. D. 1909—and said agreement for settlement was evidenced and fully set forth by and contained in two written instruments, duly executed and published in the Gaceta Oficial, Nos. 7924 and 8104, which are in words and figures following, to wit:

Translation of contract of settlement with the Government of Venezuela.

[Seal of the tribunal de cuentas, Caracas. Seal of the ministry of public credit. Seal of the ministry of hacienda.]

Dr. Felix Quintero, minister of the interior, sufficiently authorized by the Supreme Chief of the Republic, of the one part, and of the other part Richard Morgan Olcott, attorney and director of the company, "The Orinoco Shipping & Trading Company (Limited)," have celebrated the following private contract:

ART. 1. Richard Morgan Olcott, on behalf of "The Orinoco Shipping and Trading Company, Limited," agrees to consider as settled all claims, debts, and demands whatsoever which the company may have against the Government of Venezuela for services rendered by the steamers, employés, and agents of the said company to the General Government, or to the governments of the States, for the loss, deterioration, or other injury to said steamers, for damages, injuries, or losses of any description which the company may have suffered, and which may have been occasioned by the forces of the Government, by revolutionary forces, or by any other cause whatsoever, up to the date of this contract, as well as for all services which the company may continue to render to the General Government or to the governments of the States up to the first day of July next.

ART. 2. The Government of Venezuela gives to the said company by its representative, Mr. Richard Morgan Olcott, and by way of payment for the causes above specified, the sum of two hundred thousand bolivars (200,000) in coined money and in the following form:

(*a*) One hundred thousand bolivars (100,000) in cash, which the said Mr. Richard Morgan Olcott acknowledges to have received to-day to his satisfaction.

(*b*) One hundred thousand bolivars (100,000), which shall be paid in accordance with such arrangement as the parties hereto may agree upon on the date stipulated in the decree of twenty-third of April ultimo, relative to claims arising from damages caused during the war, or by other cause whatsoever.

ART. 3. Richard Morgan Olcott, in representation of the company, hereby accepts all the foregoing.

ART. 4. All doubts and controversies which may arise with respect to the interpretation and execution of this contract shall be decided by the tribunals of Venezuela and in conformity with the laws of the Republic, without such mode of settlement being considered motive of international claims.

Signed in duplicate at Caracas this tenth day of May, one thousand nine hundred.

FELIX QUINTERO.
RICHARD MORGAN OLCOTT.

LEGATION OF THE UNITED STATES,
Caracas, Venezuela, May 14, 1900.

I hereby certify that the foregoing signature across the stamp is that of Felix Quintero, minister of the interior (acting).

I furthermore certify that a true copy of this contract has been filed at this legation.

[SEAL.] FRANCIS B. LOOMIS,
United States Minister.

Translation of resolution granting to "the Orinoco Shipping and Trading Company (Limited)" the prolongation for six years of the Macareo contract.

MINISTRY OF INTERNATIONAL AFFAIRS,
UNITED STATES OF VENEZUELA, EXECUTIVE,
Caracas, 10th May, 1900—(89° and 42°).

Resolved, Richard Morgan Olcott, attorney and director of "the Orinoco Shipping and Trading Co. (Ltd.)," having solicited from the National Government an extension for six years of the contract of navigation dated 10th day of June, 1894, of which the said company is concessionary; the supreme chief of the Republic, considering the reasons on which the said company bases its petition to be justified, disposes as follows:

1. The navigation contract celebrated between this ministry and Citizen Manuel A. Sanchez, which was approved by the Federal legislative executive, and of which the said "Orinoco Shipping and Trading Co. (Ltd.)" is the actual concessionary; is hereby prolonged for six years. This extension shall be reckoned from the date upon which the term of years fixed by article 13 of the said contract expires.

2. The concessionary company undertakes within the term of 12 months, reckoned from this date, to make at least 12 voyages annually between the island of Trinidad and La Guaira, touching at the Venezuelan ports according to the itinerary of the east coast.

3. The concessionary is hereby exempted from the obligation to establish steam navigation between La Guaira and Maracaibo, and renounces the subsidy of four thousand bolivars (4,000) stipulated in article 7 of the said contract. The National Government undertakes, with regard to the navigation to Maracaibo, to grant to the said company, represented by Mr. Richard Morgan Olcott, the preference in any negotiation for the establishment of a navigation service in case the said company should desire at any future time to establish such service.

Let this be communicated and published.

For the national executive.

FELIX QUINTERO.

13. In part performance of the settlement agreed upon and evidenced as above, there was paid and delivered to and received by said Richard Morgan Olcott, director and attorney, as aforesaid, of the Orinoco Shipping and Trading Company (Limited), on May 10, 1900, the sum of 100,000 bolivars, equal to $19,200 American currency, and the decree for the prolongation of the original contract of concession, and all claims of said Orinoco Shipping and Trading Company (Limited) against the United States of Venezuela, as specified in said instruments of settlement, were by said company, acting in good faith, marked settled and balanced upon the company's books of account. Notwithstanding such settlement of May 10, 1900, and the fact that the chief consideration therefor moving from the Government of Venezuela to the Orinoco Shipping and Trading Company (Limited) was the extension or prolongation for the period of six years of the contract or concession of navigation of June 8, 1894, the chief and, indeed, only, value of which, as hereinbefore set forth, was the exclusive right to navigate the Macareo and Pedernales channels of the River Orinoco, Cipriano Castro, supreme chief of the Republic, on or about the 5th day of October, A. D. 1900, promulgated an executive decree in the words and figures following, to wit:

[Original.]	[Translation.]
Cipriano Castro, General in Jefe de los Ejércitos de Venezuela y Jefe Supremo de la República, decreto:	I, Cipriano Castro, General-in-Chief of the Army of Venezuela and Supreme Chief of the Republic, decree:
ARTÍCULO 1.° Se deroga el Decreto de primero de julio de 1893 que prohibió la libre navegación del Macareo, Pedernales y demás caños navegables del río Orinoco.	ARTICLE 1. The decree of the 1st of July 1893 which prohibited the free navigation of the Macareo, Pedernales, and other navigable waterways of the River Orinoco is abolished.

ARTÍCULO 2.° El Ministro de Relaciones Interiores queda encargado de la ejecución del presente Decreto.

Dado, firmado, sellado con el Sello del Ejecutivo Nacional y refrendado por el Ministro de Relaciones Interiores, en el Palacio Federal del Capitolio, en Caracas, á 5 de octubre de 1900.—Año 90° de la Independencia y 42° de la Federación.

[L. S.] CIPRIANO CASTRO.

Referendado:
El ministro de relaciones interiores,
[L. S.] R. CABRERA MALO.

ARTICLE 2. The Minister of Interior Relations is charged with the execution of the present Decree.

Given, signed, sealed with the seal of the National Executive, and countersigned by the Minister of Interior Relations, in the Federal Palace of the Capitol in Caracas, on the 5th of October 1900—year 90 of the Independence and 42 of the Federation.

[L. S.] CIPRIANO CASTRO.

Countersigned:
The minister of interior relations,
[L. S.] R. CABRERA MALO.

14. The Orinoco Shipping and Trading Company (Limited) by and through its duly authorized agent and representative domiciled in Caracas, one César Vicentini, on or about the 6th day of October, A. D. 1900, duly and formally protested against the validity and execution of such decree and lodged copies of said protest in the offices of the legation of the United States and the legation of Great Britain at Caracas—a copy of said protest is annexed hereto and made a part hereof, marked "Exhibit No. 4"[a]—and said protest was directly brought to the attention of the minister for foreign affairs of the United States of Venezuela, as fully appears from the diplomatic correspondence pertaining to this claim. (See particularly Mr. Russell to Secretary Hay, October 21, 1900; Minister Loomis to minister of foreign affairs, January 15, 1901; Señor Eduardo Blanco to Minister Loomis, January 29, 1901.)

15. Notwithstanding the promulgation of said executive decree of October 5, A. D. 1900, the Orinoco Shipping and Trading Company (Limited) with the object and purpose of fulfilling its obligations under article 2 of the contract of May 10, 1900, for the extension or prolongation of the original contract-concession, on April 2, 1901, began and subsequently completed one voyage between the island of Trinidad and La Guaira, touching at Venezuelan ports according to the itinerary of the east coast, the vessel dispatched on said 2d of April having reached Port of Spain, Trinidad, on her return trip on the 12th of the same month. Thereafter said vessel, being the only steamer available for such service owned or that could be acquired by said company, was temporarily withdrawn for the purpose of necessary repairs. After notice of intention to withdraw said steamer for such purpose had been given to the proper officials of the Venezuelan Government and no objection had been made to such action, and said repairs having been completed, the following communication on the subject was addressed and mailed to the minister of the interior, at Caracas, viz:

PORT OF SPAIN,
Trinidad, December 10, 1901.

To H. E., *the Minister of the Interior, Caracas.*

MR. MINISTER: According to the settlement effected by us on the 10th day of May, 1900, printed in the Official Gazette, and in consideration of the same, it was resolved that the company should complete by May 10, 1902, twelve trips between the island of Trinidad and La Guaira, touching at Venezuelan ports, according to the itinerary of the east coast. On the 2nd of April last, as we officially notified you, we started to fulfill this contract, and made one voyage, reaching Carúpano on the 3d, Cumaná and Guanta on the 4th, and La Guaira on the 5th of the same month of April. On the return trip the itinerary was as follows: Left La Guaira on the 9th April, arrived at Guanta on the 10th, Cumaná on the same day, Carúpano on the 11th, and Trinidad on the 12th of the same month. It became apparent during the above-mentioned trip that we should have to make some repairs to the only steamer owned, or that could be acquired by us, and now available for that service; and, as it was impossible to make the repairs (which included the supplying of new boilers and new parts of machinery), here, we were obliged on the 26th April, ultimo, to dispatch her to Dundee, Scotland, to her original builders. These necessary repairs have cost us over £8,000 (200,000 bolivars); and they will soon be completed, when she will be able to fulfill clause 2 of the resolution of 10th May, 1900, and complete the balance of twelve trips between Trinidad and La Guaira.

Before starting, however, our steamer on the accomplishment of this contract, we desire to inquire if your Government will guarantee us immunity from the seizure of our steamer from any Venezuelan source.

---

[a] Exhibits not included in this publication.

The failure to receive a reply from you—a reply conveying the assurance requested—by the 1st day of January next, would, in our view, exonerate us from complying with that clause in the contract.

The loss of our steamer *Nutrias*, and the practical destruction of our steamer *Vencedor*, both on Government account, warrant our asking your kind protection for the steamship *Manzanares*, which, if damaged or lost, would cause us irreparable injury.

p. p. R. MORGAN OLCOTT.
THOMAS A. TURNER.

To this communication said minister of foreign affairs replied as follows:

CARACAS, *16th December, 1901.*

To the director of the Orinoco Shipping and Trading Company (Limited), Port of Spain:

For the information of your company I remit to you herewith a copy of No. 8,412 of the Official Gazette, in which you will find published the resolution dictated on the 14th instant and which annuls that of the 10th of May, 1900, relative to certain concessions granted to the Orinoco Shipping and Trading Company (Limited).

God and federation.

J. A. VELUTINI.

The resolution of December 14, 1901, therein referred to, reads as follows:

UNITED STATES OF VENEZUELA,
MINISTRY OF THE INTERIOR, ADMINISTRATION,
Caracas, December 14, 1901.

Resolved, Inasmuch as the Orinoco Shipping and Trading Company (Limited) has not fulfilled the obligations contained in article 2 of the concession granted to the said company by a resolution of the Executive, dated 10th day of May, 1900, whereby the company undertook to make at least twelve annual voyages between the island of Trinidad and ports of its itinerary up to La Guaira, and the said company having up to this date made only one such voyage, thereby prejudicing commercial interests, as well as those of the Government, the resolution of the 10th May, 1900, is hereby revoked and the prorogation and all other benefits therein conceded are hereby declared null and void.

Let this be communicated and published.

For the National Executive:

J. A. VELUTINI.

Since said 16th day of December, A. D. 1901, notwithstanding the binding contract and agreement between the United States of Venezuela and the Orinoco Shipping and Trading Company (Limited) and your memorialist, as assignee of said company, to the contrary, said United States of Venezuela, acting through its duly constituted officials, has authorized and permitted said Macareo and Pedernales channels of the river Orinoco to be used and navigated by vessels engaged in foreign trade other than those belonging to your memorialist or its predecessors in interest, and has thus enabled said vessels to do much of the business and to obtain the profits therefrom which, under the terms of said contract-concession of June 8, 1894, and the extension thereof of May 10, 1900, should have been done and obtained solely by your memorialist or its said predecessor in interest, and much of said business will continue to be done and the profits derivable therefrom will continue to be claimed and absorbed by persons and companies other than your memorialist, to its great detriment and damage.

Said contract-concession, on the basis of the settlement of May 10, 1900, above referred to, was and is of the reasonable value of $82,432.78 per annum, amounting in the whole for the unexpired term of said contract of concession as prolonged, viz, fourteen years eight months and three days, to the sum of $1,209,701.05.

16. Since July 1, 1900, the Orinoco Shipping and Trading Company (Limited) and your memorialist have rendered many and varied services to the Government of Venezuela and its officers, agents, and employees authorized to contract for and to require the same, for which no payments have been made, and has suffered damages by reason of the wrongful and illegal acts of the said Government of Venezuela and its officers and agents in improperly detaining and delaying its vessels and in seizing one or more of said vessels and improperly using the same, and in appropriating to its or their own use the stores and supplies and cargo contained in said vessels and by the wrongful actions of its officials, and particularly its consul at Trinidad, in improperly refusing to clear its said vessels and by discriminating against its said vessels and cargoes transported therein by means of illegal imposts and exactions, as

will more fully and particularly appear from the following statement thereof, the details of which statement and the items composing the same will appear at length in the vouchers, protests, and proofs submitted herewith:

	Pesos.	
Passages and freights, July to October, 1900		$1,053.00
Hire of *Delta* 44 days	8,800.00	
Hire of *Socorro* 6 days	600.00	
Hire of *Socorro* 5 days	500.00	
Hire of *Socorro* 11 days	1,100.00	
Hire of *Masparro* 11 days	1,100.00	
Hire of *Guanare*, *Socorro*, *Masparro*, and *Héroe*	3,000.00	
Hire of *Guanare*	1,650.00	
Hire of *Socorro* 57 days	5,700.00	
Hire of *Masparro* 3 days	300.00	
Hire of *Socorro* and *Masparro* 75 days to March 31, 1902	7,500.00	
Passages to March 31, 1902	3,348.76	
	33,598.76	=25,845.20
Claim for refund of national imposts illegally levied		19,571.34
Losses sustained owing to detention of *Bolivar* by consul		3,509.22
Expenses caused by stoppage of *Bolivar* at San Felix and cost of goods delivered for use of Government		2,184.20
Loss and earnings, June to November, 1902, as per average statement		61,336.20
Detention and use of *Masparro* and *Socorro* from April 1, 1902		28,461.53
Repairs to *Masparro*		2,520.50
Repairs to *Socorro*		2,932.98
Passages since April 1, 1902		224.62
Total		147,638.79

From all of which it plainly appears that there is reasonably, equitably, and justly due to your memorialist from the Republic of Venezuela the sum of $1,376,539.05 United States gold or its equivalent, without including interest on such of said claims as interest is properly chargeable upon, claim for such interest not being waived, but being hereby expressly asserted.

In addition to the foregoing your memorialist hereby makes claim for the further sum of $25,000 for consul fees, charges, and expenses incurred in and about the prosecution of said claims.

Wherefore your memorialist claims of and from the Republic of Venezuela the full sum of $1,401,539.05 in United States gold or its equivalent, exclusive of interest, as aforesaid.

THE ORINOCO STEAMSHIP COMPANY,
By R. MORGAN OLCOTT, *President*.

BRIEF FILED BY AGENT OF THE UNITED STATES.

The United States presents in this case the claim of the Orinoco Steamship Company, to recover on various claims the total sum of $1,401,539.05, with interest to be calculated upon certain portions thereof.

I.—STATEMENT OF FACTS.

The claimant is a citizen of the United States, being a corporation organized under the laws of the State of New Jersey.

On the 1st of April, 1902, the claimant, for and in consideration of its entire capital stock of $1,000,000 and the discharge of the outstanding debts and obligations of the Orinoco Shipping and Trading Company, purchased and took over all the property, assets, and claims of that company, including the contract concession from the Government of Venezuela for the exclusive navigation by steamships engaged in foreign trade of the Macareo and Pedernales channels of the Orinoco River, together with all claims of said Orinoco Shipping and Trading Company against the Government of Venezuela for services rendered and other causes.

The claims which are presented are three in number:

First. A claim for a balance of 100,000 bolivars overdue under an agreement of settlement made between the Orinoco Shipping and Trading Company and the Government of Venezuela on the 10th day of May, A. D. 1900, and evidenced by instruments in writing of that date, copy of which written instruments is set forth in the memorial (p. 104).

Second. A claim for damages arising from the annullment by Executive decree of October 5, 1900, subsequently ratified by the legislative power of the exclusive contract-concession above referred to.

Third. A claim made up of charges for services rendered in carrying passengers and freights, and other amounts due under the terms of the contract concession, and for imposts illegally exacted, for loss of earnings from June to November, 1902, by reason of illegal and improper discriminations against the claimant company's vessels by Government agents and representatives, and for use and detention of and damages to the claimant's vessels.

The facts out of which these claims arise are, briefly, that in 1893 the Government of Venezuela had, by an Executive decree, reserved the Macareo and Pedernales channels of the Orinoco River for coastal service only, and thereafter, on the 8th of June, 1894, by an act of the Congress of Venezuela, a contract was made, which by various duly recognized and lawful transfers became the property of the claimant, same being set out in full in the memorial (pp. 99–101), whereby the claimant and its predecessor became possessed of the exclusive right of navigation of those channels upon and in consideration of certain terms and conditions as to the carrying of freight and passengers and the rendition of other services for the Government as therein specified.

This concession-contract was to be good for the full period of fifteen years, to expire on the 8th of June, 1909.

Various services to the Venezuelan Government having been rendered by the Orinoco Shipping and Trading Company and its assignor, under said contract, claims against that Government arose in favor of said Orinoco Shipping and Trading Company, and such claims and the vouchers in support thereof presented from time to time to the proper officials amounted, on the 10th day of May, 1900, to the total sum of $532,996.85. On said May 10, 1900, a full settlement of all of such claims was made between the said Orinoco Shipping and Trading Company and the Government of Venezuela, whereby, in consideration of the extinguishment and cancellation of said claims, there was paid to said company the sum of 100,000 bolivars in cash, with an agreement to pay a further like sum thereafter, and a further agreement to extend the effective period of said contract concession for six years, to expire on the 8th day of June, 1915.

Notwithstanding the exclusive rights so granted to and being the property of said Orinoco Shipping and Trading Company under said concession, and in consideration of the extension of which for the further period of six years as aforesaid claims of such magnitude, due as above, had been surrendered, the Government of Venezuela, on the 5th day of October, 1900, promulgated and published a decree opening said channels of the Orinoco River to free navigation by all persons whatsoever, thereby violating and annulling the solemn compact between the Government and the company, on the faith of which more than $940,000 had been invested in preparing for and building up the business.

Since said October 5, 1900, the Orinoco Shipping and Trading Company up to April 1, 1902, and since then the claimant herein, have continued to operate the vessels and to perform the terms of the contract concession upon their part to be kept, by reason whereof there have accrued due in favor of said companies various claims for passages, freights, and use of steamers under the contract, and other claims specified in the memorial, but not covered by the settlement of May 10, 1900, all of which are owned by the claimant here.

The total of these claims, including the claim for damages, but exclusive of interest properly allowable on the contract claims amounts to $1,376,539.05, to which is added a claim of $25,000 for counsel fees and expenses incurred by claimant in endeavoring to obtain satisfaction thereof.

It being the desire of the United States Government to urge before this Commission only such claims and items as appear to be well founded, certain items forming part of this claim as originally presented to the United States Department of State have been erased and are not now insisted upon.

II.—THIS COMMISSION HAS FULL AND AMPLE POWER TO HEAR AND DETERMINE THESE CLAIMS.

The Orinoco Shipping and Trading Company (Limited) was an English corporation, whose stock, however, to the extent of about 99 per cent thereof, was owned by citizens of the United States. The claimant company, the Orinoco Steamship Company, was organized by said stockholders for the purpose of taking over and conducting the business of the former concern. The transfer of the properties and of the accrued claims to the claimant company, which is a citizen of the United States as aforesaid, was made on April 1, 1902, after most of the claims had accrued due.

The entire capital stock of the Orinoco Shipping and Trading Company (Limited), with the exception of seven shares of £1 each, was, and from the organization of said company had been, owned by individuals who were citizens of the United States, and, thereafter, on January 31, 1902, such American shareholders caused to be organized, under the laws of the State of New Jersey, the Orinoco Steamship Company, your claimant, the American individuals referred to becoming and now being the owners of more than 90 per cent of the capital stock thereof.

By virtue of the transfer or assignment for value by the Orinoco Shipping and Trading Company (Limited) to the Orinoco Steamship Company of all of the assest and properties, franchises, and credits of the former company, including book accounts and pending claims against the Government of Venezuela, the latter company, a juridical person and a citizen of the United States of America, became and is now the legal and sole owner of the claims here presented.

Article 1 of the protocol of agreement establishing this High Commission expressly declares that:

"All claims *owned* by citizens of the United States of America against the Republic of Venezuela * * * and which shall have been presented to the Commission hereinafter named by the Department of State of the United States or its legation at Caracas, *shall be examined and decided* by a mixed commission, which shall sit at Caracas. * * *"

This provision is plain, and would seem to permit of no question as to the jurisdiction of this Commission to examine and decide these claims "according to justice" and "upon a basis of absolute equity without regard to objections of a technical nature or of the provisions of local legislation."

It is certain that the claimant is a citizen of the United States of America, and that the claims now here presented to this Commission by the Department of State of the United States are owned by it and by it alone.

III.—THE VARIOUS CLAIMS OF THE CLAIMANT ARE FULLY SUPPORTED BY THE EVIDENCE.

As far as the first claim for the sum of $19,200 is concerned, it being the claim for the balance of cash due upon the settlement made May 10, 1900, and evidenced by the written agreement of settlement with the Government of Venezuela itself, there can be no ground for dispute.

The facts, moreover, as to the action of the Venezuelan Government in first granting, then extending, and finally annulling the contract for the exclusive navigation of the interior waterways by opening the same to free navigation, are amply shown by documentary evidence, and there would seem to be no question either as to the facts in this respect or as to the liability of the Venezuelan Government to respond in damages for its breach of contract in such connection, the only question pertaining to this item likely to provoke discussion seemingly being as to the amount of the damages flowing from such breach.

The evidence, furthermore, amply supports the various items of the third claim. The claims for passage and freight money are due strictly in accordance with the terms of the contract and the tariffs long ago fixed thereunder. The claims for the detention and use of various vessels of the company by the Venezuelan Government are proved by the official orders and certificates covering the same, and the necessary expenses of refitting the ships, owing to injuries received while in the hands of the Venezuelan authorities, are likewise amply proven by vouchers, affidavits, and other documentary evidence.

IV.—THERE CAN BE NO QUESTION AS TO THE LIABILITY OF THE VENEZUELAN GOVERNMENT FOR THE ACTS COMPLAINED OF.

With respect to the first item or claim for $19,200, being the second installment of cash agreed to be paid in furtherance of the settlement of May 10, 1900, the same being an express agreement of the Government itself to pay a certain sum within a reasonable time thereafter, and now long overdue, the liability of the respondent Government to pay the same with interest would seem to be established beyond dispute.

In addition to the provisions of the written agreement of May 10, 1900, itself (Memorial, p. 103), the liability to pay such sum in gold has also been admitted diplomatically.

In the case of Metzger & Co. against the Republic of Haiti (Foreign Relations of the United States, 1901), submitted to arbitration by agreement between the United States and Haiti, where the respondent Government before the arbitrator sought to evade the effect of certain representations and admissions thereabouts made by its

duly accredited representative, the arbitrator, Hon. William R. Day, disposed of the matter in the following language (p. 270):

"I am of opinion that this arrangement agreeing to settle Metzger & Co.'s grievances, promptly accepted by the secretary of state for foreign relations of Haiti, followed by the assurance of the secretary, conveyed by the minister to the State Department at Washington, that the matter had been settled within twenty-four hours, constituted a diplomatic agreement between the two countries which, upon settled principles of international law, should have been carried into effect. It is claimed on the part of the Government of Haiti, that this correspondence amounted only to an agreement on the part of Haiti to use its good offices with the commune of Port-au-Prince. I am of opinion that it amounted to much more than that. * * * It can not be that good faith is less obligatory upon nations than upon individuals in carrying out agreements. * * * I do not understand that the limitations upon official authority, undisclosed at the time to the other Government, prevent the enforcement of diplomatic agreements. The question came before the Chilian claims commission created by the convention of August 7, 1892, between the United States and Chile, in which a claim was made upon a contract entered into by the United States minister in Chile, in making which the Government of the United States claimed the minister had no authority and denied responsibility; claiming further that the agreement was in violation of the statutes of the United States, and that the plaintiff had a remedy in the United States courts. The commission decided unanimously that it was immaterial whether the minister had exceeded his authority or not, as he had made the promise as the representative of the United States in the name of his Government, which, according to the rules of responsibility of Governments for acts performed by their agents in foreign countries, can not be repudiated. In the present case there is no claim that the minister was unauthorized to make the diplomatic representation stated. On the contrary, he was only carrying into effect the instructions of his Government. The learned commission referred, in support of their decision, to Calvo, Dictionnaire de Droit International, Volume II, page 170, and Calvo, Dictionnaire International, Volume I, section 417; Moore's Digest International Arbitrations, volume 4, pages 3569–3571. Nor is there any more avail in the argument that the remedy of Metzger & Co. is to be sought in the courts of Haiti against the commune. Even had Metzger & Co. such a right this would not affect the right to arbitrate the claim, as has been done in this case. By the terms of the protocol the arbitrator is competent to take jurisdiction of the claim so far as the liability of the Government of Haiti is concerned (4 Moore's International Arbitrations, p. 3571). * * * A diplomatic arrangement fairly and honorably entered into should, in my judgment, be carried into effect. * * *"

An admission of debt made in the course of diplomatic negotiations and reiterated in a subsequent offer to pay the amount admitted in certain installments is now no more to be denied or refuted by the nation which made it than any diplomatic agreement.

The diplomatic admission of the debt in July, 1901, and the subsequent offer to pay the amount thereof in installments, absurdly small though they were, was also in effect a diplomatic representation as to the validity and binding force internationally of the entire settlement, evidenced by the agreements in writing of May 10, 1900.

As to the liability of Venezuela with respect to the claim for compensation for damages suffered by reason of the annullment of the concession of navigation by the arbitrary decree of October 5, 1900, there would seem be no more doubt.

That the concession-contract for the exclusive navigation of the interior mouths of the Orinoco River by vessels engaged in foreign trade constituted a valuable property right would seem be indisputable. That the contract was legal and mutually binding will hardly be controverted. Acting upon the faith of the grant, the claimant company and its predecessors in interest had laid out over $940,000 in United States currency in acquiring ships and preparing to do and perform the various services incident to the business of a common carrier in those waters. In addition to promoting the commerce of the country and providing for the convenient movement of its inhabitants and their goods, and for the transportation of its troops and stores, the Venezuelan Government reserved to itself a distinct advantage, of which it has continuously availed itself, of having transported its officials, employees, troops, and supplies at one-half of the ordinary tariff rates.

That the concession was a valuable one is evidenced by the fact that during the years 1899–1901, although revolution was rife and the entire business of the country was much disturbed, the average net earnings of the company's steamers plying the waters covered by said concession amounted to $56,573.95 per annum.

That a sovereign nation is bound to indemnify foreigners for its *failure* to perform its contracts or to protect their property within its borders is settled in principle.

(Phillimore, Int. Law, vol. 2, p. 8; Martens, Droit des Gens, vol. 3, ch. 3, p. 299; Wildman, Int. Law, 193; Woolsey, Int. Law, 38–112; Report United States and Venezuelan Mixed Commission, 1890, p. 297; Vattel, book 2, ch. 8, sec. 104; Bluntschli, Int. Law Cod., secs. 366, 380.)

How much greater is the responsibility of a nation which deliberately and without just cause destroys the property of such foreigners? That a contract right founded upon a consideration good in law to do a thing in the contract specified is a property right is also settled; that a grant of a monopoly of navigation or of carriage for revenue or hire is a property right is equally clear.

Article 691 of the civil code of Venezuela expressly recognizes and declares that a property right may rest in contract alone (*por efecto de los contratos*), and as the concession or grant of a monopoly as here results from and rests in the contract of the parties to it, it seems certain that such a concession or grant is properly within the definition of Venezuelan municipal law, as it has repeatedly been declared to be by high tribunals administering international law. (See case of the Delagoa Bay Railway, 2 Moore Int. Arbitrations, pp. 1879 et seq.; "The Cheek Claim," id., p. 1899.)

In the very recent case of the United States against the Republic of San Salvador, respecting the claim of the Salvador Commercial Company, usually referred to as the case of the "El Triunfo Company," the controversy had its origin in schemes to establish and develop a port on the bay of Jiquilirco, in the Republic of San Salvador, and the wrongful revocation by San Salvador of its concession for such purpose granted to the El Triunfo Company. The grantee's privileges were conclusive as to steam navigation of the port and the transshipment of passengers and merchandise exported through the port for the period of twenty-four years. The contract concession in that case contained many provisions similar to those of the contract-concession in the case here under consideration. The concessionary company entered upon the performance of its obligations as fixed by the terms of the concession and conducted the business during the years 1895, 1896, and 1897 without, however, deriving any profit therefrom. During the first six months of 1898 the company's receipts exceeded all losses and expenses of every kind by the sum of $17,000. Early in 1899 the president of San Salvador issued an edict closing the port against all importations, thus striking down and practically canceling and destroying the concession which that Government had theretofore granted.

In the opinion of the umpire, Sir Henry Strong, concurred in by the American Commissioner, Mr. Don M. Dickinson, it is said, that—

"It is not the denial of justice by the courts alone which may form the basis for reclamation against a nation, according to the rules of international law. 'There can be no doubt,' says Halleck, that a State is responsible for the 'acts of its rulers, whether they belong to the legislative, executive, or judicial department of the government, so far as the acts are done in their official capacity.'[a] * * *

"Said Mr. Fish to Minister Foster: 'Justice may as much be denied when it would be absurd to seek it by judicial process as if denied after being so sought.'

"Again, this is not a case of the despoliation of an American citizen by a private citizen of Salvador, on which, on appeal to the courts of Salvador, justice has been denied the American national, nor is it a case where the rules applying to that class of reclamations, so numerous in international controversies, have to do. This is a case where the parties are the American nationals, and the Government of Salvador itself is a party to the contract; and in this case, in dealing with the other party to the contract, the Government of Salvador is charged with having violated its promises and agreements by destroying what it agreed to give, what it did give, and what it was solemnly bound to protect.

"So one of the most respected authorities in international law, Lewis Cass, has laid down the undoubted rule and its exception, as broad as the rule, when he says that 'when citizens of the United States go to a foreign country, they go with an implied understanding that they are to obey its laws and submit themselves in good faith to its established tribunals. When they do business with its citizens, or make private contracts there, it is not to be expected that either their own or the foreign government is to be made a party to this business or these contracts, or will undertake to determine any disputes to which they give rise.

"'The case is widely different when the foreign government becomes itself a party to important contracts, and then not only fails to fulfill them, but capriciously annuls them, to the great loss of those who have invested their time and labor and capital from a reliance upon its own good faith and justice. (Wharton's Digest, sec. 230.)

"In any case, by the rule of natural justice obtaining universally throughout the world wherever a legal system exists, the obligation of parties to a contract to appeal for judicial relief is reciprocal. If the Republic of Salvador, a party to the contract which involved the franchise to El Triunfo Company, had just ground for complaint

[a] See Halleck, International Law, Chap. XIII, sec. 4.

that under its organic law the grantees had, by misuser or nonuser of the franchise granted, brought upon themselves the penalty of forfeiture of their rights under it, then the course of that Government should have been to have itself appealed to the courts against the company and there, by the due process of judicial proceedings, involving notice, full opportunity to be heard, consideration, and solemn judgment, have invoked and secured the remedy sought.

"It is abhorrent to the sense of justice to say that one party to a contract, whether such party be a private individual, a monarch, or a government of any kind, may arbitrarily, without hearing, and without impartial procedure of any sort, arrogate the right to condemn the other party to the contract, to pass judgment upon him and his acts, and to impose upon him the extreme penalty of forfeiture of all his rights under it, including his property, and his investment of capital made on the faith of that contract.

"Before the arbitrament of natural justice, all parties to a contract, as to their reciprocal rights and their reciprocal remedies, are of equal dignity and are equally entitled to invoke for their redress and for their defense the hearing and the judgment of an impartial and disinterested tribunal.

"It follows that the Salvador Commercial Company and the other nationals of the United States who were shareholders in El Triunfo Company, as hereinbefore named, are entitled to compensation for the result of the destruction of the concession and for the appropriation of such property as belonged to that company."[a] * * *

The annulment by the Government of Venezuela of the concession-contract in the case at bar, without notice to the other party to the contract and without affording it an opportunity to be heard, puts that Government in the position of having destroyed the property of the claimant company, and entitles it to receive by way of compensation therefor substantial damages.

There can, we think, be but little question as to the amount of the damages suffered by the claimant in such respect. Whether we regard as a basis of computation the value assigned to the contract-concession in the settlement of the company's claims on May 10, 1900, whereby the extension of six years further time was secured, or whether we regard the evidence as to the earning capacity of the company, in either event the amount claimed in the memorial, viz, $1,209,701.05, is shown to be a fair and reasonable estimate of the loss accruing to this company by the unwarranted destruction of its property rights. In this connection it is interesting to observe that in the El Triunfo case, above cited, the umpire awarded to the claimant the sum of $750,000 as damages for the annulment of its concession, although its invested capital approximated but a fourth of that outlaid by the present claimant, and its business, with the exception of a single period of a few months, had been done at a loss, while in the case at bar net earnings are shown averaging more than $56,000 per annum.

As to the items of the third claim, we think there can also be no question as to the liability of the Venezuelan Government. Such of the items as are for passage, freight, etc., are expressly due under the terms of the contract, in accordance with the rate of tariff as fixed under that contract. That the Venezuelan Government is liable for the use of the vessels of the company taken by it for its own use, and for damages to the vessels while in its possession, and for the necessary repairs which had to be made upon them in consequence thereof, and for stores and supplies taken from the company's ships by the military officers, and that it is equally liable for national imposts illegally levied, there can, it would seem, be no question. The amounts of the various items of claims on such accounts are fully and particularly set forth in the proofs in support thereof.

In regard to the item of $61,336.20 claimed for wrongful discriminations against the company by the consuls of the Venezuelan Government in refusing to clear the company's vessels for the Orinoco ports during the months of June to November, 1902, inclusive, attention is invited to the typewritten copies of certificates of the harbormaster at Port of Spain, Trinidad, from which it appears that notwithstanding the then existence of the so-called blockade of the Orinoco River and ports which was made the basis of the consul's refusals to clear the claimant company's steamers, said official or his vice-consul did clear for such ports on several occasions ships laden with general cargo belonging to other owners, viz, the *Alemana* and the *Rescue*, and further, that 1,375 vessels of various sizes, all flying the Venezuelan flag, and with a few exceptions in ballast all carrying general cargo, viz, cocoa, balata, gum, rubber, oxen, mules, horses, asses, goats, pigs, hides, and the like, entered the port of Port of Spain from various ports in Venezuela, including the Orinoco River ports, and practically the same number of said vessels left said port during said period laden with general provisions, hardware, dry goods, etc.

Unlawful discrimination by governments in the affairs of neutrals resulting in interruption of business and consequent loss of profits and receipts affords a basis of

[a] For. Rel. U. S., 1902, pp. 870–871.

reclamation and corresponding liability to answer for damages equally with other positive torts.

There can be from the facts of this case no question that the Government of Venezuela is liable to the claimant upon each of the claims presented and in the full amount claimed.

ANSWER OF VENEZUELAN AGENT.

[Translation.]

Honorable members of the American-Venezuelan Mixed Commission:

The writer, agent of the Government of the United States of Venezuela, has studied with due care the declaration in the claim of the Orinoco Steamship Company, and submits:

The reclamation of the Orinoco Steamship Company is based on the rights and faculties which were transferred by another, an English company, styled the Orinoco Shipping and Trading Company (Limited), which latter company assumed to have the right to claim from the Venezuelan Government for breach of contracts of which it was the cessionary. We shall hereafter set forth whatever may be relevant in respect to this transfer and in regard to the character of American citizen which the claimant company seeks to arrogate to itself.

In the first place, the simple admission by the Commission of a reclamation like that with which we are dealing, for decision by that body, is an act which in itself clashes openly and visibly with the rules established by the protocol signed in Washington the 17th of February of this year, in virtue of which the Commission has been created. In effect the protocol referred to stipulates that the questions to be submitted to the international tribunal shall be decided on the basis of and in accordance with the most absolute equity, and the Commissioners have sworn to decide according to this rule; nevertheless, the Commission would completely set aside that basis of equity, if it should admit for its decision a question that has arisen between parties bound by contracts concluded with all the formalities of law, hearing only the allegations and arguments of a single one of the contracting parties and depriving the other of all its means of defense and of all its exceptions; and in no other way would the Commission proceed in the case of admitting to trial the claim of the said company, because Venezuela, one of the contracting parties, and with the same rights and faculties on its own part, could not defend itself before the Commission as it could before a court of law; and so much is this a fact, that although Venezuela has claims of very good origin to make of the company, it can not substantiate them before the Commission, which lacks jurisdiction to determine these questions. Therefore, there would be favored openly and greatly a single one of the parties to the detriment and injury of the rights of the other; there would be granted in advance, without trial of the case, a better right and a more advantageous situation to one only of the parties, depriving the other of all its legitimate means of defense, and, as may be seen by the mere presentation of these considerations, without the need of further demonstration. Such respective situation of the two parties is in open opposition to the most simple principles of equity; for one of the parties, facilities, privileged means of proof and many other advantages, while for the other party, deprivation of all its ordinary legal recourses, the rejection of its rights in advance, and the impossibility of supporting its charges. Venezuela can not claim before the Mixed Commission the losses and damages which may be caused it by the lack of compliance with the contracts which it has concluded with American citizens. Thus, from this point of view the Commission, proceeding in accordance with its fundamental rule, which is the strictest equity, should reject this reclamation.

And the said reclamation should also be set aside because, as the claimants base their reclamation on contracts which they have concluded with Venezuela, or, rather, contracts in which they have substituted themselves voluntarily and deliberately for Venezuelan citizens, there must be established in advance whether those contracts are valid or not, and if they are valid, as in effect they are, all and every one of their clauses must be equally valid and obligatory; none of these clauses can be set aside nor greater legal force be attributed to one than to another; and, therefore, just as full legal force is attributed to the clauses which the claimant company invokes on which to base its reclamation, so also should full legal force be attributed to the clauses of those contracts in which the contracting party—who has to-day been substituted by third parties who have accepted those contracts in all their parts and provisions, voluntarily and deliberately—obligates himself to have recourse to the Venezuelan authorities for the adjustment of every question which may arise between the parties, and that these questions can never be the motive or occasion of diplomatic or international reclamations. Therefore, if the clause is valid on which

the claimant supports himself and by which Venezuela obligates herself to concede to the contracting party the right to establish a line of steamers between Ciudad Bolívar and Maracaibo and to grant to the contracting party the exclusive use of same for a fixed period of time, it is in all respects eminently just, equitable, reasonable, that for both parties there should also have force and be obligatory the provision which contains the clause relative to the authority which should adjust the questions between the parties; and, further, it is also eminently just, equitable, reasonable, indisputable, that if said contracting party violates this clause and seeks to give to his reclamations an international and diplomatic character, he should be obliged in virtue of the same basis which he invokes to have recourse to the authorities which he himself voluntarily and deliberately appointed for the adjustment of controversies between the contracting parties. Therefore, the honorable Commission would abandon its fundamental basis of absolute equity from the moment when it should permit one of the contracting parties to violate in so apparent and arbitrary a manner the contract on which it bases its claims; the Commission, with no reasonable motive, with no legal grounds, would set equity completely aside, if it should esteem as valid only those clauses of the contract which favor the claimant party and should annul those others which serve as guaranty to both the parties, since all the provisions contained in the contract, which is the law in force between the parties, are equally valid and obligatory for both the contracting parties. For these reasons, which are within the grasp of the most ordinary intelligence, reasons which not only are in perfect accord with the legislation established in all cultivated and civilized countries, but also with the most elementary principles of equity and justice, the honorable Commission should reject the reclamation that is here dealt with, because, by the mere act of introducing the same, the claimant party violates in the most flagrant manner the contract on which he seeks to base his claims.

According to the honorable agent of the Government of the United States of America, the reclamation of the Orinoco Steamship Company contains three points, to wit:

First. The balance of 100,000 bolivars which Venezuela owes to the Orinoco Shipping and Trading Company (Limited), by virtue of the transaction which on May 10, 1900, was concluded between both contracting parties and in which the Government of Venezuela for 200,000 bolivars, which said company was to receive, paid all the claims which up to that date and for all motives were held by the company against the Government, including in that amount the payment of all the services which the company might have to lend to the Government to the 1st of July of the same year. The company received on that occasion 100,000 bolivars, and the remaining 100,000 bolivars are those which the new company, the Orinoco Steamship Company, now claims. This part of the claim is sufficiently opposable, in the first place, because a new creditor has been substituted for the former one without notice to and without the consent of the debtor, and in credits which are not payable to order, notification to the debtor is necessary for their transfer, which requisite has here been omitted because Venezuela did not subscribe to any obligation to the order of its original creditor for those 100,000 bolivars; and, on the other hand, although this credit of the original company is evidenced by a document which has full legal force, there is not for this reason extinguished or renounced the right which Venezuela has to collect the amounts which the original company is owing to her and to set over against it the corresponding compensation; and, further, the cessionary company bound itself in the very document on which it bases this part of its reclamation to the provision that every question which might arise by reason of that agreement should be decided precisely by the tribunals of Venezuela and could never open the way to international reclamations. According to what has been set forth this part of the claim is not in order; first, because the Government owes nothing to the Orinoco Steamship Company; secondly, because if the Government owes anything in the said relation to the Orinoco Shipping and Trading Company (Limited), this company owes also to Venezuela net amounts in various other relations, and it is necessary to settle the compensation in order to determine definitely which is creditor and which debtor, and thirdly, because the company on concluding that transaction expressly bound itself to submit all differences to the tribunals of Venezuela, and from the moment that it ignores this capital agreement Venezuela has also the right to ignore her obligations now that her rights have been denied. Such a decision—that is to say that the honorable Commission should reject this part of the reclamation (in the event that in spite of the reasons above set forth it should elect to admit the same to a hearing) for the weighty circumstances alleged, all of which are based on the most absolute and evident equity—is formally imposed.

Second. In the second place, the claimant company bases a part of its reclamation on the fact that the national Government, by resolution of the 5th of October, 1900, on opening to free navigation the Macareo and Pedernales channels, annulled by the

act the concession which the company claims to have obtained for the exclusive navigation of those channels. Such a basis is also absolutely out of order, because the resolution of the Government has not injured, nor can it injure in any manner, the concession of the company, because, as is stated by the fundamental contracts—and as may readily be seen—the ends of that concession are entirely distinct and foreign to the present claim of the company. The contracts state that the concession is for the *establishment of a line of steamers between Ciudad Bolívar and Maracaibo*, and the fact that the Government of Venezuela should subsequently open to navigation two mouths of the Orinoco previously closed (from the year 1893) can not injure that concession in any manner. The navigation of the Orinoco is free, and that circumstance does not injure any line of steamers nor any individual, but rather it favors all. The pretensions of the claimant in the respect of which we are treating are in every way *inadmissible and absurd and unfounded*. The concession of which the contract treats is for the *establishment of a line of steamers between Ciudad Bolívar and Maracaibo*, which does not imply that only the holder of that concession shall have the *exclusive right to navigate in the Orinoco River*. Such a pretension is an untenable absurdity, and so much the more, in that the company has not had its steamers in service. To the contracting party, whose rights were transferred to the Orinoco Shipping and Trading Company (Limited), there was never granted the *exclusive navigation of the Macareo and Pedernales channels*, nor anything of the sort. These channels had been closed to shut out contraband trade from the year 1893, and when the contract was signed in 1894, there was *permitted*, there was simply *permitted*, to the contracting party the navigation of same, and a permission is very far from being the same as the company to-day pretends is the *privilege of exclusive navigation by the Macareo and Pedernales channels*. If on the basis of this simple permission the company claims to have exclusive privilege of navigation in the Orinoco River, it might also claim the exclusive navigation in that part of the sea which lies in the route from Ciudad Bolívar to Maracaibo. One thing is as absurd as the other. That privilege of exclusive navigation has never been granted by the Government of Venezuela; it is not stated in the contract nor does anything therein cause it to be inferred; it is in itself an absurdity. Thus, therefore, these grounds of the reclamation should be rejected, and everything which it contains relative to same should be blotted out.

Third. In regard to the third foundation of the reclamation, the Orinoco Shipping and Trading Company (Limited), and not the Orinoco Steamship Company, has the right to payment for the services which it has lent the Government of Venezuela, but in accordance with the special tariffs which have been agreed to between them both.

The claimant company stated, as a basis to its claim, that when in May, 1900, it claimed from the Government of Venezuela $532,996.85, it was satisfied to reduce this amount to 200,000 bolivars because its contract of navigation was extended for six years more—that is to say, six years which should commence to run on the 8th of June, 1909. In a word, the company claims that it paid to the Government of Venezuela a sum, which was deducted from the amount of its reclamation, for the concession of the six years' extension. Such a contention is absolutely false because, as may be very well seen by the document of the transaction of May 10, 1900, the extension does not figure therein as estimated in any amount or in any other manner, and the document of the transaction being that which contained the bases and results of that compact, it is clear that such an important factor should not be omitted, and therefore the claimant can not allege that consideration which is not anywhere in evidence nor which may be presumed to have existed. Neither can he support himself on the fortuitous circumstance that the extension of the concession and the transaction bear the same date because, basing himself on that circumstance, entirely fortuitous, he could also allege that all the acts of the Government on that day are connected with the transaction. The executive resolution, which granted the extension of six years, equally fails to contain the circumstance which the company invokes, nor is there in that resolution even a word from which it may be inferred that the company paid for that extension, as it pretends, but, on the contrary, it subjects it to certain conditions with which the company has not complied. Therefore there is no connection of any sort between the transaction and the extension, and thus the company can not invoke as a basis for its reclamation the assertion that it paid to the Government an amount given to the end that said extension should be granted to it. The resolution and the transaction have no connection whatever, and they can not be considered as bound together by the simple statement of one of the interested parties. In the transaction there were no other grants than those which are recited by the document that was subscribed to by the parties for that purpose, and to that document, which furnishes full evidence between the parties, there can not be given a greater extension than that which it has in itself.

It is also absolutely false, as has already been demonstrated, that the interests of the company have suffered detriment by virtue of the executive resolution of October 5, 1900, because, as has been said, the free navigation of the Macareo and Pedernales channels does not in any way affect its rights because its concession is not for the *exclusive navigation of said channels* as it pretends, but only for the establishment of a *line of steamers between Ciudad Bolivar and Maracaibo*, and it is simply *permitted* to navigate in the said channels. The circumstance that the cessionary company has invested, as it affirms itself, the sum of $940,000 in its vessels and preliminary works, can not in any manner affect the Government of Venezuela because the company did not enter into these expenses by order of the Government, but because by its own statement it deemed it advisable to do so, and because it was rendered necessary in order to assure so far as possible the favorable result of its enterprise. These expenses may very well have been entered into by miscalculation, and it would be wholly absurd to pretend that Venezuela should be held responsible for the bad transactions of third parties. On the other hand, attention is sufficiently claimed by the fact that that investment of funds should have taken place in 1900, when the contract had already existed for six years since 1894; for, that is to say, at least, that during all that previous time the contracting party had not fulfilled his obligations.

The company also claims to have complied exactly with its obligations, and this is absolulutely false, because up to date, as the Government of Venezuela can very well prove, the said company has never exactly and fully complied with its obligations.

There is also rejected, in the most formal and conclusive manner, the item of $25,000, which the company claims to have expended in efforts made with the end of obtaining justice, because the Government of Venezuela has never refused to fulfill its obligations, although it is certain that it should not and could not have accepted in any manner as laws for its guidance the absurd claims of the company which it has always sought to favor in every possible way.

I have also to make an observation which I esteem as very much in order, and this is, that there should be presented in original all the documents to which the claimant company refers, because the printed forms to which the company has reduced them can not be accepted insomuch as Venezuela has had no part therein. These documents should be presented in original in order to be able to make all objections which their study merits because the printed forms which have been presented to the Commission can not be equivalent to the documents themselves, and once for all Venezuela objects to those published forms and disavows the documents which figure therein as having emanated from her. Therefore if the documents are presented in original she will investigate them and will reject or accept those which should be rejected or accepted.

If the Government of the United States, before having taken up this reclamation, had taken into account all and every one of the documents and antecedents of same, perhaps it would have rejected the reclamation totally, as it declares to have done in respect of certain of the items which it contained. Now, in regard to what the Government of Venezuela may be owing to the Orinoco Shipping and Trading Company (Limited) for passages and other services, it is necessary in the first place to arrange between both parties as to the prices for certain services which are not stipulated in the tariffs agreed upon; for example, the lease or charter of a steamer, because from this moment there is rejected the computation which the claimant makes on the basis of 100 pesos per diem, because that is an arbitrary valuation made by him, without the consent of the other party, by and for himself, and further to determine what are the services which the Government is obliged to pay for. When all this shall have been agreed upon, determined, and established, it will still remain to take into account what the company owes to the Government for divers causes in order to strike a balance and to determine definitely which is creditor and which debtor.

It is also to be observed that the item of the claim relative to imposts illegally paid by the company, as it affirms, which item amounts to $19,571.34, in the same, that is to say, in that item there are included payments which, according to the same company, correspond to the years 1898, 1899, and 1900; and according to the transaction concluded between the Government of Venezuela and the company, this latter, in virtue of that arrangement, could claim nothing, absolutely nothing, from Venezuela for reasons prior to that date, 10th May, 1900, and consequently in the transaction of that date there were included certain of the items which it now claims newly, and therefore these items should be rejected. Moreover, it is now timely to state that Venezuela solemnly rejects, once for all, the items of the reclamation which belong to a period prior to May 10, 1900, because all those which the company had or could have had against Venezuela were covered by the said transaction.

It is also a fitting time to bring to the knowledge of the honorable Commission that Venezuela has, in accordance with her contracts, entered an action against the

company for the payment of losses and damages arising from the failure to comply with the contracts, and as Venezuela has a superabundance of proofs, it is probable that the said company will be found to be owing to Venezuela much more than that which it so unjustly claims to-day.

The transfers which the Orinoco Shipping and Trading Company (Limited) may have been able to make to the Orinoco Steamship Company or to whatsoever other persons do not affect Venezuela in any way, because they have not been made in accordance with the contracts which said company is obliged to carry out, and also without having fulfilled the requirements of law. Moreover, in the denied supposition that those transfers should be valid, it would equally fail to affect Venezuela, as at the time when the acts occurred which are invoked as a basis of the claim the Orinoco Steamship Company did not exist and could not have had any rights before coming into existence. In order that it might be protected to-day by the United States of America it would be necessary, in accordance with the stipulations of the protocol, that the damages, in the event of being a fact, should have been suffered by an American citizen, not that they should have been suffered by a third party of different nationality and later transferred to an American citizen. Such a proceeding is completely opposed to equity and to the spirit of the protocol. And it avails nothing that the former company should have manifested to the Government of the United States that the stock of the company was held for the most part by American citizens, because the personality of the company and that of the stockholders are entirely distinct, and just as the stockholders can not support themselves by the exceptions which may be deduced from the juridical personality of the company, so also can the latter not avail itself of those which may be deduced from the personality of the stockholders. Thus, therefore, neither first nor last can the Orinoco Shipping and Trading Company (Limited) be regarded as an American personality, and consequently the claim should be rejected.

A great part of the enormous sum claimed arises from the fact that the company estimates at $82,432.78 the net annual revenue, which it claims to have failed to receive during the eight years, eight months, and three days which remain for its contract to expire, because it says that this contract was annulled in fact by the executive resolution of October 5, 1900. To this there must be objected, in the first place, that, as has already been shown, the said resolution has not in fact annulled the contract, because in same there has never been granted the exclusive privilege of navigation in the Macareo and Pedernales channels, but this was simply permitted; and, further, that the estimate is entirely arbitrary. It also claims for the six years' extension granted by the resolution of May 10, 1900, at the same rate of $82,432.78, and in this respect, even in the supposition that the annual rate which it establishes should be accepted, the company lacks the right to charge for those six years, because the Government granted that extension without any corresponding concession on the part of the company, and, on the contrary, subjecting it to conditions which the company did not fulfill, and consequently it withdrew that concession on the day when it became convinced that the company was not fulfilling the conditions; and to such procedure it had perfect right, because it was a gratuitous concession on its part which could in no way bind it, and much less when the conditions which it imposed upon its liberality were not complied with. Therefore the company could in no case claim for those six years which were withdrawn from it, because the Government effected the withdrawal in the same manner in which it granted the concession, by and of itself, on the 14th of December, 1900, by executive resolution, in which are enumerated the reasons which actuated it. Thus, then, that part of the claim, that is to say, the part relative to that which the company claims to have failed to gain during the years which remain to it, is entirely irrelevant.

From what has been set forth there may be deduced:

1. That the mere admission of the claim of the Orinoco Steamship Company as cessionary of the Orinoco Shipping and Trading Company (Limited), by virtue of a void transfer, which has not been notified to nor accepted by the Government of Venezuela, and made in express contravention of the fundamental contracts—the mere admission of the claim to be decided by the honorable American-Venezuelan Mixed Commission, that simple fact, is entirely opposed to equity, because it treats of reclamations between two contracting parties, and it would give to a single one of them facilities and favors which are denied the other, who is deprived of its legitimate means of defense, when according to equity both contracting parties should be exactly in their rights and faculties and should have identical means of defense.

2. That if it is on the basis of his contracts that the claimant founds his reclamation, as, according to equity and the legislation of all countries, the clauses of a contract concluded with all the formalities of law can not, some be valid and others void, and as the claimant grounds himself on certain clauses of those contracts whilst in

same there are others by which he is obligated to have recourse to the tribunals of Venezuela for the adjustment of all his differences, it is equitable, absolutely equitable, that it should not be left to one of the parties openly to violate his agreement; and therefore, as this claimant on obtaining the transfer of said contracts voluntarily and deliberately bound himself to submit himself to the tribunals of Venezuela and never to have recourse to diplomatic means, he should in equity and in justice be compelled to comply with the compact, and, consequently, that reclamation should be set aside, the presentation of which involves in itself the most flagrant violation of the contracts by which it assumes to be supported.

3. That the $19,200 which the company claims as the balance of the transaction of May 10, 1900, should have set against them the net amounts which the company owes to Venezuela for other matters; and that so long as the parties do not concur in regard to these accounts and so long as the proper balancing of accounts is not effected, it is impossible to determine which is the creditor and which is the debtor.

4. That the grounds which the claimant invokes, in saying that the Government of Venezuela by Executive resolution of October 5, 1900, in fact broke the contracts celebrated and diminished the rights of the claimant, are absolutely false and inadmissible grounds, because the Government of Venezuela has never conceded to anybody the *privilege of exclusive navigation by the Macareo and Pedernales channels*, but on the contrary, those channels having been closed since 1893, it simply *permitted* by the contract of 1894 that navigation might be effected by those channels, which it declared open to all the world on October 5, 1900. Therefore, the company can not have suffered in any way from that declaration, because its contracts do not treat of the privilege of navigation by said channels, but of the establishment of a line of steamers between Ciudad Bolívar and La Guaira.

5. That the extension of six years granted to the Orinoco Shipping and Trading Company (Limited) was not conceded to this company in virtue of the concession which it claims to have made in reducing a part of the claim which in May, 1900, it had introduced against the Government of Venezuela, but was granted to it without any concession on its part, whilst imposing certain conditions the lack of compliance with which would place Venezuela in a position to suspend the concession, as it did, and in the same manner in which it had granted it, by Executive resolution of 14th December, 1901. Therefore the company can claim absolutely nothing for the withdrawal of that concession, because it was through its own fault that it was withdrawn; and even if it had not so turned out, the Government had the fullest right to withdraw that concession which had been an act of liberality on its part. Moreover, even in the event that the extension of six years should be in force, the Orinoco Steamship Company could not claim anything in that respect, because in granting the concession to the Orinoco Shipping and Trading Company (Limited) the privilege to transfer same was not accorded to it and consequently it is an inalienable concession.

6. That the Government of Venezuela can have no responsibility of any sort, because the company should have made an investment of $940,000—because such action took place without the intervention of any kind on the part of Venezuela, which should not be liable in any case for such an investment, that could have been governed by more or less well-grounded calculations of the company.

7. That it is to be noted that such investment took place after the contract had been in force for seven years, and that this proves that the contracts had not been fulfilled in any manner.

8. That in respect to the amount which the claimant charges for passages and other services, it will be first necessary to come to an agreement in regard to the passages for which the Government really should pay, and afterwards, to strike the balance that has already been spoken of; at the same time taking note that the 100 pesos per diem which the claimant charges for the lease of its vessels in the service of the Government is an entirely arbitrary valuation, because that valuation should be made by mutual agreement.

9. That between the transaction of May 10, 1900, and the Executive resolution of that same date there is no connection of any kind as is pretended by the claimant, who alleges that the extension was granted by reason of the fact that his claim having amounted on that date to $532,996.85, he reduced it to 200,000 bolivars, because it was taken into account that the company ought to produce a certain amount in each year and an equivalent was thereupon established; that this agreement should figure in the transaction and does not so figure; and that the connection of this nature which the claimant alleges to exist between both acts of the Government can not be deduced from a simple coincidence in the date of both documents.

10. That the estimate which the claimant makes for the years which are lacking to the termination of the contract and for which he charges the Government a given

sum per annum, is entirely out of order and unfounded, because the Government has not failed in any manner to fulfill its agreements and consequently is under no obligation to answer to the company in the particular indicated; and that, in the event, which is denied, that it should so have to answer, the appraisement of these damages is not in any manner the province of the interested party; that the Government from this time forth rejects that estimate in itself as being entirely unfounded, and further because the appraisement is arbitrary; and in regard to what is claimed in the same respect in relation to the six years of the extension, it rejects it absolutely, as much because the reclamation is in itself unfounded, and out of order for the same reasons that are advanced relative to the years which are lacking for the natural termination of the contract, as because that extension was in any case withdrawn by the Government of Venezuela in due form and for more than sufficient cause.

11. That the transfers which the Orinoco Shipping and Trading Company (Limited), claims to have made to the Orinoco Steamship Company are completely void, and Venezuela rejects them from this moment forth, because they have been made in opposition to the agreements which the first company accepted voluntarily and deliberately; because due notification of same was not given, and because they lack all the formalities which in general similar acts require.

12. That the documents should be presented in original to be able to give them the study which they merit, because the printed forms produced have been made by the interested party without the control and supervision of any authority; and that in this respect Venezuela reserves the right to reject or to admit, after an examination of the original documents, those which it may consider to call for such action.

13. That even if the transfer invoked were valid, as the damages, in the event of being a fact, occurred before the company was created, they can not have been suffered by an American citizen, and consequently the reclamation is not within the terms established in the protocol; and, on the other hand, neither can the fact be invoked that 99 per cent of the capital stock was held by American citizens, because the juridicial personality of the stockholders has no effect upon the juridical personality of the company, which has a separate moral entity, nor vice versa, and therefore that circumstance can not be invoked, and so much the less in that it is unverifiable.

14. That the item of $25,000 for expenses in seeking justice is also rejected absolutely as being unfounded and out of order, because Venezuela never has refused to satisfy its obligations, although it is indeed certain that it has not accepted, nor will accept, as laws the impositions and pretensions of those who have entered into contracts with her.

15. That in the transaction of May 10, 1900, there were included all the claims which the company might have against Venezuela for any reason prior to that date; and that in the present claim items appear, among others that of "imposts and contributions illegally paid," which are prior to that date.

16. That Venezuela has also reclamations against the company and that with this motive there is pending before the competent tribunal an action against the company.

In synthesis, the Government of Venezuela rejects in all and every one of its parts, for the reasons set forth and for others which it promises to set forth and substantiate at the proper time, the claims of the Orinoco Steamship Company, of whose existence it came to have indirect notice in the month of May of this year, through a published report in the Gaceta Municipal. And it also wishes to bring to the knowledge of the honorable Mixed Commission that the Orinoco Shipping and Trading Company (Limited) has taken part in the internal affairs of the nation, as is proven by the evidence which I produce, together with sundry publications; adding that this company up to date, in spite of having received the most decided and efficacious protection, has never fulfilled its obligations to the Government of Venezuela. On all the grounds alleged I respectfully ask of the honorable American-Venezuelan Mixed Commission that it may be pleased to set aside as unjust, illegal, and unfounded the claim of the Orinoco Steamship Company, which presents itself as cessionary of the rights and faculties of the Orinoco Shipping and Trading Company (Limited), to which the tribunals of the nation are open for the allegation of its rights, and to which procedure it is obligated by the contracts on which it bases its reclamations, which contracts it accepted and bound itself to observe voluntarily and deliberately.

Replication Filed by Agent of the United States.

In addition to objections involving the merits of this claim in general and specified items thereof in particular, the respondent Government has suggested three several reasons why this High Commission should not "admit" or "consider" the claim at

all, which reasons or objections with change or order in which they appear in the answer may be stated as follows:

First. The damages, if any there have been, were not sustained by the claimant itself, but were sustained, if at all, by the claimant's assignor, the Orinoco Shipping and Trading Company (Limited), an English corporation. Therefore, such damages "have not been suffered by an American citizen, and consequently the reclamation is not within the terms established in the protocol." In connection with this objection, and as incidental to it, it is also objected that the fact that 99 per cent of the capital stock of said English corporation was owned at the time the damages accrued by American citizens is of no consequence, "because the juridical personality of the stockholders has no effect on the juridical personality of the company, which has a separate moral entity."

Second. Because all clauses of the contract are "equally valid and obligatory," and the claimant should be required to conform to that provision of the contract which relegates all disputes arising between the parties to the Venezuelan courts, without recourse to diplomatic intervention.

Third. As the Venezuelan Government has claims of good origin against the company which she "can not subtantiate before the Commission, which is without jurisdiction to determine them," and therefore she can not defend herself as she could before a court of law, to hear and determine the claim of the company under such circumstances would be "in open opposition to the most simple principles of equity;" and, therefore, the "Commission, proceeding in accordance with its fundamental rule, which is (that of the) strictest equity, should reject this claim."

These three objections are, so to speak, fundamental in character and general in scope. If either one of them be in law and truth well founded, the claim should be dismissed.

Objections first and second attack the jurisdiction of this Commission to hear and determine the merits of the claim at all. Objection number three, while seemingly admitting the existence of jurisdiction in the Commission to hear and determine the claim as presented by the United States, demands that it be dismissed because under the terms of the protocol the Commission is without jurisdiction to hear and determine by way of offset or counterclaim certain unliquidated and unascertained claims for damages on the part of the Government against the claimant and its assignor. Such claims appear never to have been thought of, and certainly not to have been asserted in writing or other form calculated to lend them permanency, until after the presentation of this case to this Commission.

We are confronted at the very threshold of the discussion, then, with the question of the jurisdiction of the Commission in the premises, and it seems well in the discussion of it to follow the question as outlined in the first and second objections above.

JURISDICTION.

Article 1 of the protocol under which this tribunal has been organized and is acting provides that—

"*All* claims *owned* by citizens of the United States of America against the Republic of Venezuela * * * which shall have been presented to the Commission * * * by the Department of State of the United States or its legation at Caracas, shall be examined and decided by a (the) mixed commission, which shall sit at Caracas. * * *."

"Before assuming the functions of their office, the commissioners and the umpire shall take solemn oath carefully to examine and impartially to decide, according to justice and the provisions of this convention, *all claims submitted to them* * * *. The commissioners, or, in case of their disagreement, the umpire, shall decide *all* claims upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation."

From the express words of the protocol, therefore, it appears that with respect to the jurisdictional power of this High Commission to hear and determine claims against the Republic of Venezuela, but two conditions are prescribed as prerequisites:

First. That the claim shall be *owned* (poseida) by citizens of the United States of America; and,

Second. That the claim shall have been *presented* to the Commission by the Department of State of the United States or its legation at Caracas. *Every* claim so owned and presented the Commissioners are, or in case of their disagreement the umpire is (art. 2 of protocol), in duty bound "carefully to examine and impartially to decide."

If upon examination of any claim so presented to the Commission, and every claim presented by the agent of the United States must be conclusively presumed to have been presented "by the Department of State of the United States or its legation

at Caracas," it shall appear that the claim is owned (poseida) by a citizen of the United States, it would seem beyond dispute that the Commission was possessed of full jurisdiction to hear the claim, consider the proofs, and adjudge the controversy.

The significance of the word "owned" is too well understood to render quotations of its definitions worth while, but no definition of it could be more apt than the primary definition given in Nuevo Diccionario de la Lengua Castellana of its treaty equivalent *poseida* (poseer) viz: *Tener una cosa en su poder*, i. e., *owned*, to hold in possession, no matter how acquired.

But it is said that these words of possession must be construed in accord with established principles of general international law, and as the general rule is that international claims must be national in origin as well as at the time of submission, the special words of possession used in this treaty must be held to include only such claims as were American in origin and not to include claims which, though not American in origin, have since in due course of business come by assignment or otherwise into the possession of American citizens.

This suggestion ignores entirely the fact that high contracting parties, sovereign in name and power, are possessed of the fullest liberty of contract, and that it is entirely competent for such parties by express agreement to waive or overrule as between themselves any or all general principles or technical rules of law.

There is no general prohibition of law, international or municipal, against the assignment of claims such as have, for instance, been submitted to this august tribunal for adjudication.

This subject was much discussed in Camy's case before the United States and French Mixed Commission under the convention of January 16, 1880. In that case it appeared from the memorial itself that the claimant, Camy, a French subject, had assigned his interest in the claim to an American citizen, but for reasons best known to himself he asserted that the assignment was void and that he was therefore entitled to urge the claim in his own behalf before the Commission. The agent for the United States contended that the assignment was valid, and demurred to the claim. The demurrer was sustained, the Commissioners in disposing of the matter saying:

"The convention under which we act is silent upon the question whether the original claimant may or may not assign his claim to another. The commissions heretofore established by treaty between the United States and other powers for the settlement of such claims have recognized the right of the original claimant to transfer his claim to another. The rules of the British and American, the Mexican and the Spanish commissions recognize the right and require the transfer to be set forth in the memorial. The rules of this Commission also recognize the right. Several cases of awards to assignees may be found among the decisions of the British and American Claims Commission. We think the claim existed and vested in the claimant a right to relief and compensation when the acts of taking the cotton and converting it to the use of the United States were committed. True, there was no court or tribunal to which the claimant could present his claim and obtain judgment and compensation, but his moral right existed, and the establishment of this tribunal recognized it and gave him a legal remedy for his right because no other existed." * * * (3 Moore Int. Arb., pp. 2398–2400.)

Conceding, then, the general rule with respect to national claims to be as contended for by the honorable agent for Venezuela, viz, that they must be national in origin as well as national at the time of submission to the arbitral tribunal, this rule, as was said in the case of Abbiatti against Venezuela (3 Moore Int. Arb., 2348), is "subject, of course, to treaty terms."

In that case the Commissioners agreed that, in the absence of treaty terms to the contrary, the touchstone of jurisdiction was whether the State seeking redress was the State that had been injured by a wrong done to one who at the time of the doing thereof was its own citizen.

A striking example of an exception from the general principle is found in the repeated rulings of the so-called Court of Alabama Claims, which was organized pursuant to the act of June 23, 1874 (United States of America), for the distribution of the so-called Geneva award.

The treaty upon which said award was founded recites that—

"ART. 1. Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty and still exist, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the Alabama claims; * * * Now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims which are not admitted by Her Britannic Majesty's Government, the high contracting parties agree that all the said claims * * * shall be referred to a tribunal of arbitration. * * *

"ART. 7. * * * In case the tribunal find that Great Britain has failed to fulfill any duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it. * * *

Art. 10 provided, that in case the tribunal found Great Britain to be in fault, but did not "award a sum in gross," a board of assessors should be appointed to ascertain and determine "what claims are valid, and what amount or amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure,' and also that the members of said board "should impartially and carefully examine and decide, to the best of their judgment and according to justice and equity, all matters submitted to them, and shall forthwith proceed * * * to the investigation of the claims which shall be presented to them by the Government of the United States."

The arbitrators having carefully examined the evidence and documents submitted by the respective parties for their consideration, making use of the authority conferred upon it (them) by Article VII of the said treaty, "awarded to the United States a sum of $15,500,000 in gold, as the indemnity to be paid by Great Britain to the United States *for the satisfaction of all the claims referred to the consideration of the tribunal.*" (1 Moore Int. Arb., pp. 658–659.)

It thus appears that the award was made in full settlement of all the "claims on the part of the United States" referred, under the stipulations of the treaty, to the consideration of the arbitrators. .

The amount so awarded in gross having come into the possession of the United States, the act of June 23, 1874, above referred to, providing for the creation of a court to distribute the same, was enacted. (18 Stats. at L., U. S., pt. 3, p. 248.)

Section 12 of said act provided, "And no claim shall be admissible, or allowed by said court, arising in favor of any person not entitled, at the time of his loss, to the protection of the United States in the premises;" but, notwithstanding the contention of the representatives of the United States to the contrary, the court held that the act rendered admissible the claims of all persons, native born or naturalized, and even unnaturalized, who were at the time of their loss or injury entitled, in respect of such loss or injury, to the protection of the flag of the United States on the high seas, excepting only British subjects, who were held to be excluded on the ground that they could not be entitled to the protection or intervention of the United States as against their own Government.

The learned judge who prepared the leading opinion on the point, among other conclusions, declared that—

"It was a great principle for which our Government had contended from its origin, a principle identified with the freedom of the seas, viz, that the flag protected the ship and *every person* and *thing* thereon not contraband. * * * Therefore, on the ground of abstract justice and propriety and upon the ground of legal right, we decide that foreigners entitled to the protection of our flag in the premises, whether naturalized or not, have a right to share in the distribution of this fund." (3 Moore, p. 2351.)

The court passed upon a large number of claims in which the claimants were persons of foreign birth, not naturalized, and entered judgment in their favor whenever they showed a loss under the provisions of the act, except in the cases of native-born subjects of Great Britain. (3 Moore Int. Arb., pp. 2350–2354.)

It is to be noted that these claims of aliens which were allowed by that court were the very claims which the United States submitted to and urged before the arbitrators appointed by and acting under the terms of the treaty between the United States and Great Britain, and were in part "the claims *on the part* of the United States" which the gross award of $15,500,000 was intended to satisfy.

The case of the *Texan Star* is also instructive in this connection. The vessel was built in Boston, and in 1863 her managing owners were Stevens & Co., American citizens, who, on the breaking out of the war of the rebellion, transferred her to a British subject so as to prevent her capture by Confederate cruisers. On the transfer her name was changed to the *Montaban*, but she was left by her nominal vendees in the absolute charge and control of her former master. Having set out on her voyage she was captured and, with her cargo, burned by the Confederate cruiser *Alabama*.

The counsel for the United States contended that the vessel having been sold to a British subject and put under the British flag, said vessel was British property, and, therefore, not being entitled to the protection of the United States *in the premises*, the claimants could not recover; but, after an elaborate review of precedents and authorities, it was held by the court that notwithstanding the *Texan Star* was sailing under the English flag at the time of her capture and destruction, nevertheless, the American claimants, whether continuing to be the absolute owners of the ship in consequence of the invalidity of the fictitious sale, or whether as mortgagees

in possession with unlimited authority, whether with or without any registration, owned property in the *Texan Star* (*Montaban*); that that property, notwithstanding the change of flag, was under the protection of the United States; that the property was lost from damage directly resulting from the act of the Confederate cruiser, and that, therefore, the claimants came within the provisions of the act providing for the distribution of the Geneva Award. (3 Moore Int. Arb., p. 2360, 2379.)

It is very plain from this opinion that the court in determining its jurisdiction looked through the bill of sale and change of flag, and, seeing that notwithstanding the apparent English ownership, the real ownership was American and that America and American citizens had suffered the damage and wrong complained of, swept aside all technical difficulties that stood in the path of justice and awarded compensation where damage had been done.

The reason for the conceded rule that, in the absence of special provision to the contrary in the treaty or articles of convention, the claim to merit consideration at the hands of an international commission must be national in origin as well as at the time of its presentation to the commission, for adjudication lies in that principle of public policy, which forbids speculation in national claims and prevents the drumming up and purchase by citizens of a powerful state of claims against a foreign nation which have accrued to citizens of an unpotent state.

But, the reason for the rule being absent, the rule itself falls, and even in the absence of a treaty stipulation to that effect, there would seem to be no room for its application in a case such as here at bar, where the element of speculation is entirely wanting and the beneficial ownership of the claim at the time of origin and ever since has remained the same; for although the Orinoco Shipping and Trading Company (Limited) was a British corporation and the Orinoco Steamship Company is an American corporation, the owners of the respective companies—that is, the stockholders—were, with unimportant exceptions, the same in each (sworn memorial, p. 96). The beneficial interest in the company having been at all times American, any injury done the company or its properties was a direct injury to American citizens, and consequently a wrong to the United States, which it was the purpose of the protocol and the parties to it to have righted.

The fact that at the date of the main wrongs complained of, the predecessor in interest of the present claimant was an English registered company is of no great moment, for there is respectable precedent for national intervention in behalf of national stockholders in a foreign corporation and of shareholders in a ship sailing under a foreign register and flag.

The Delagoa Bay Railway arbitration between the United States and Portugal is directly in point. (2 Moore Int. Arb., 1865 et seq.)

The facts of that case were as follows:

In 1883 Edward McMurdo obtained a concession from the Portugese Government to construct and operate a railroad from Lourenço Marquez to the frontier of the Transvaal. It was stipulated in the concession that he should form a company for this purpose under the laws of Portugal, and such company, called the Lourenço Marquez and Transvaal Railway Company, was organized in accordance therewith. In May, 1884, Colonel McMurdo assigned his concession to the Lourenco Marquez and Transvaal Railway Company, and received as consideration therefor 498,940 out of 500,000 shares of the stock of the said Portuguese company. By the same instrument Colonel McMurdo agreed to construct the railroad in consideration of the transfer to him of the whole of the debenture bonds of the company, amounting to £425,000.

For several years McMurdo was unsuccessful in his efforts to float these bonds. Finally, in 1887, he obtained the assistance of English capitalists, who, however, stipulated that their interests should be represented by the bonds and shares of a company to be incorporated under English laws. In this way the Delagoa Bay and East African Railway was formed with a capital of £500,000 in shares. McMurdo then assigned to this English company his shares in and bonds of the Portuguese company and the benefit of his contract with said Portuguese company of May, 1884; the English company undertaking to indemnify him in respect to the obligations of his contract, to pay him £115,500, and to give him their entire issue of stock. The company then issued debenture bonds to pay McMurdo and raise money to build the road.

In July, 1887, the Portuguese Government intimated that it would require an extension of the line of the railway. Meantime the railway was completed in accordance with the original plans and accepted by the Portuguese Government, with a reservation of the question as to the further extension of the line. Controversies over this extension led to the confiscation of the road in June, 1889, by Portugal.

The first step of the United States toward intervention was taken May 9, 1889, when Mr. Blaine instructed Minister Lewis, at Lisbon, to send the Department all the documents relating to the McMurdo concession. On June 19 Mr. Blaine further instructed Mr. Lewis that it was reported that the Portuguese Government intended to take possession of the railway on the 24th of June, and he expressed the hope that no decisive action might be taken until the Government of the United States could investigate the case and make known any objections it might desire to express. At the same time he reserved all the rights of the United States in the matter. When it was reported that the concession had been canceled, Mr. Lewis was instructed to make a formal protest, reserving all rights the heirs of McMurdo, who had died meanwhile, or other American citizens might have in the consession; and on October 12, 1889, Mr. Loring, who had succeeded Mr. Lewis as our minister at Lisbon, was directed to "inform Portuguese minister for foreign affairs that this Government, after careful investigation, views the forfeiture of Delagoa Railway concession and confiscation of the property of American citizens as unwarrantable and unjust, and that it will demand and expect the restoration of property or indemnity for losing, inflicted by Portuguese Government at the time of threatened forfeiture."

On November 8, 1889, in the course of a long instruction to Mr. Loring, reviewing the facts in the case, Secretary Blaine says:

"Upon full consideration of the circumstances of the case, this Government is forced to the conclusion that the violent seizure of the railway by the Portuguese Government was an act of confiscation which renders it the duty of the Government of the United States to ask that compensation should be made to such citizens of this country as may be involved. * * * The Portuguese company being without remedy and having now practically ceased to exist, the only recourse of those whose property has been confiscated is the intervention of their respective governments."

Independently of this action on the part of the United States, which it is to be noted was taken on behalf of an American stockholder in a Portuguese company, the British Government had also intervened on behalf of its citizens who were bondholders in the English corporation, the Delagoa Bay and East African Railway, the sole connection of the latter company with the controversy being as above stated, viz, that by transfer from McMurdo it had become the assignee or holding company of the shares in and bonds of the Portuguese company given to McMurdo in consideration of the construction of the railway. On September 10, 1889, Lord Salisbury instructed Mr. Petro (the English representative in Portugal) that—

"Her Majesty's Government are of opinion that the Portuguese Government had no right to cancel the concession, nor to forfeit the line already constructed. They hold the action of the Portuguese Government to have been wrongful and to have violated the clear rights and injured the interests of the British company, which was powerless to prevent it, and which, as the Portuguese company is practically defunct (this suggestion was vigorously denied by Senhor Barros Gomez, Portuguese minister of foreign affairs), has no remedy except through the intervention of its own government. In their judgment the British investors have suffered a grievous wrong in consequence of the forcible confiscation by the Portuguese Government of the line and the materials belonging to the British company and of the security on which the debentures of the British company had been advanced; and that for that wrong Her Majesty's Government are bound to ask for compensation from the Government of Portugal."

We thus have the case of both the United States and Great Britain asserting the propriety and exercising the right to intervene as against Portugal on behalf of their respective nationals, stockholders, or bondholders in a Portuguese corporation. An agreement to arbitrate having been reached, the arbitrators were named by the President of the Swiss Republic, and after an exhaustive review of the matters connected with the claim recently rendered an award in favor of the claimants for a large sum.

An even more striking instance of national intervention on behalf of a national stockholder in a foreign corporation is to be found in the case of the claim of the Salvador Commercial Company, an American corporation, and other citizens of the United States, all being stockholders in the "El Triunfo Company (Limited)," a San Salvadorean corporation. This controversy had its origin in a scheme to establish and develop a new port on the Pacific coast of Central America in the Republic of Salvador.

In that case a concession for the navigation of the port in question had been granted to the Salvadorean corporation, 51 per cent of the stock of which was owned by the American corporation first above named. The concession having arbitrarily withdrawn by the Salvadorean Government, the American citizens interested appealed to their Government for protection and reclamation. The Government of

San Salvador denied the right of the Government of the United States to intervene in the matter, insisting that the Government could only deal with the claims of the San Salvador corporation which, as a citizen of that country, should seek its redress, if any it had, in the San Salvador courts. After prolonged diplomatic negotiations, the entire matter was submitted to arbitration.

Before the arbitrators it was again asserted that the United States could not in that case make reclamations for its nationals, the shareholders in El Triunfo Company, for the reason that such citizens, having invested their money in the Republic of San Salvador must abide by the laws of that country and seek their remedy, if any they have, in its courts, and that before reclamations can be successfully urged in their behalf by the United States it must be shown that such courts having been appealed to a denial of justice had resulted. While not denying the general proposition of law as thus stated, the Commission (the umpire, Sir Henry Strong, and the American commission concurring) sustained the right of the United States to intervene under the circumstances on behalf of its nationals—mere stockholders though they were—and rendered an award in claimant's favor for a large sum.[a] (A full copy of the decision of the commissioners in that case is submitted herewith; see also extract and remarks in relation thereto contained in brief on behalf of the United States heretofore filed herein.)

It thus appears that, even had there not been any transfer of rights from the English corporation, the Orinoco Shipping and Trading Company (Limited), to the American corporation, the Orinoco Steamship Company, it would still have been entirely competent and in accord with established precedents for the United States to have intervened as against Venezuela and to have demanded on behalf of its nationals, although stockholders in an English company, compensation for losses and damages suffered by such nationals as the result of arbitrary interference with the company's business or its property by Venezuela.

A foundation for such action was in fact laid by the American diplomatic representative in Caracas when, in conjunction with the English minister, he called upon the Venezuelan minister of foreign affairs, and, showing him the company's protest against the decree of October 5, 1900, opening the Macareo and Pedernales channels to free navigation, asked for a modification of it "in some way, as the carrying out of it would certainly very greatly injure the interests of company in question."

Another view of this subject is also interesting. There is in session at the present time in this capital, in addition to the United States and Venezuelan Mixed Commission, also a British and Venezuelan Mixed Commission. The former has jurisdiction of all claims owned by American citizens which shall have been presented to it for decision by the United States Department of State. The latter has jurisdiction of all British claims not otherwise settled that may be brought before it. As in any view one or the other of these commissions would have had jurisdiction to hear and determine such portion of this claim as accrued to the English company, it would seem to be a matter of small concern which one was called upon to decide it.

If it be true that Venezuela has arbitrarily destroyed property rights of the Orinoco Shipping and Trading Company (Limited), and thereby inflicted injuries upon that company, which, as necessarily follows, must ultimately fall upon its stockholders, who were American citizens, it would seem that the wrong that was done was always a wrong against the United States and its citizens.

The basis of intervention having been established, it is of small consequence, either in principle or practice, whether such intervention takes place on behalf of the individual stockholders who had been wronged or on behalf of a corporation to whom their rights, whatever they were, had been transferred.

On October 21, 1899, the Orinoco Shipping and Trading Company (Limited) invoked "the aid and protection of the American Government for the interests of American citizens involved therein," representing that 99 per cent of its capital stock was owned by Alfred B. Scott, J. Van Vechten Olcott, and R. Morgan Olcott, three American citizens. That this application for protection met with a prompt response and produced satisfactory results appears from the letter to the Secretary of State of the United States under date of June 19, 1900, forwarding copies of the papers pertaining to the settlement of May 10, 1900, and expressing the thanks of the company "for the good offices so promptly extended in its behalf."

March 13, 1902, the United States Department of State was informed of the incorporation of the Orinoco Steamship Company, and also of the fact that on the 10th of the same month a resolution had been duly passed "authorizing the transfer of all of the property and assets of the Orinoco Shipping and Trading Company to the Orinoco Steamship Company."

---

[a] For. Rel. U. S., 1902, p. 871.

September 15, 1902, Minister Bowen called the attention of the Venezuelan Government to the complaint of the "Orinoco Steamship Company," an American corporation, that "its contract with the Venezuelan Government, by which it was guaranteed the exclusive navigation of the Macareo and Pedernales channels of the Orinoco," has been violated, and requested his excellency the minister for foreign affairs "to bring the case to the attention of your Government to the end that the American company in question be fully protected in its rights."

Receipt of this communication was acknowledged by Señor Baralt, minister for foreign affairs, with an expression of the surprise "produced at the claim of the so-called *Orinoco Steamship Company*," and suggesting that "the claimants may have wished to refer to a question" theretofore raised by Mr. Bowen's predecessor, in course of which the Venezuelan Government "was asked to take into consideration the losses alleged to have been caused the claimants by the closing decree in question;" to which request the Venezuelan Government had replied, stating "the legal and judicial circumstances which prevented the Government from admitting claims of that nature, and pointed out the remedy for all claimants for damages based on presumptive or effective titles," and reference was made to the correspondence in question, Señor Baralt stating that he reaffirmed "the position then taken by this ministry."

The correspondence referred to appears on pages 138–140 of the Diplomatic Correspondence in this case, and, after referring to the damages sustained by the Orinoco Shipping and Trading Company as a result of the decree of October 5, 1900, disclaims any intention of discussing the principle of free navigation involved therein, but invites attention to the matter for the purpose of considering "whether or not the American stockholders who own 90 per cent of the shares of this company are not likely to suffer losses, owing to the promulgation of this decree, that should in justice entitle them to adequate compensation at the hands of the Venezuelan Goverment." To this the then minister of foreign affairs, Señor Eduardo Blanco, replied, referring to the mention made "of a claim that is likely to be presented with the intervention of the United States Government;" that the question presented "from its origin and nature, as it is a case of litigation, can not be investigated except in conformity to the provisions of internal legislation, and, in conformity to instructions from the Chief Executive, I have to respectfully inform your excellency that it is impossible to look at claims of that kind in the same manner as your excellency appears to do in the concluding part of your note."

It thus plainly appears that as early as January 29, 1901, the Venezuelan Government was advised through diplomatic channels of the existence of the claims against said Government in favor of the Orinoco Shipping and Trading Company, and of the disposition of the United States to intervene in behalf of the American stockholders in said corporation, and later of the fact that the American corporation, the Orinoco Steamship Company, had taken over the assets of the former company, including the claims in question, and that the United States Government was still disposed to intervene in such behalf on account of the damages occasioned as aforesaid.

It can not, therefore, be reasonably argued that the two Governments, acting through their respective plenipotentiaries, when effecting the protocol under which this Commission is acting, were not fully cognizant of the existence and pendency of this very claim, or that they did not intend affirmatively by the word "owned" (poseida), specially selected as it was—for its use in this protocol is unique—to cover this very case, whose continued pendency unsettled was calculated to vex sorely both Governments. The purpose was undoubtedly to dispose forever of all outstanding differences between the countries, and the words used in the protocol to effect that end are so clear as to leave no room for construction.

The pendency of the claims in question was known by both Governments. That they had been transferred to and were consequently owned by the Orinoco Steamship Company, a citizen of the United States, was equally well known. Equally possessed of such knowledge, the high contracting parties agreed to submit to the determination of arbitrators "all claims owned by citizens of the United States." That the high contracting parties were competent to so stipulate must be admitted by everyone who asserts that they possess the attributes of sovereignty. Having evidenced their agreement by the use of the most apt words to be found in the English and the Spanish languages to express the desired end, it would seem to be idle to attack the jurisdiction of this Commission by invoking a general principle which, while applicable where the treaty is silent, all agree must yield when the treaty by words specially selected speaks otherwise.

Second. But it is also said that as all clauses of the contract are equally obligatory the claimant should be required to conform to that provision of the contract which

relegates all disputes between the parties to the Venezuelan courts without recourse to diplomatic intervention.

Article 14 of the contract of navigation, which is undoubtedly referred to in this connection, provides (Memorial, p. 100) that "Disputes and controversies which may arise with regard *to* the *interpretation* or *execution* of this contract shall be resolved by the tribunals of the Republic in accordance with the laws of the nation, and shall not in any case be considered as a motive for international reclamations."

It is to be remarked in the first place that no dispute has arisen between the parties concerning either the *interpretation* or execution of said contract. The Venezuelan Government having seen fit, by its decree of October 5, 1900, to put an end to the entire value of the concession by granting to other steamers plying between Trinidad and Ciudad Bolivar the right to ply through the Macareo and Pedernales channels contrary, as we assert, to the provisions of article 6 of the contract by which the Government undertook to concede to no other line of steamers "any of the benefits, concessions, and exemptions contained in the present contract, "a claim arose in favor of the parties interested for the destruction of the property rights embodied in the contract. The Government having in fact annulled the concession by destroying its only value could not reasonably assert that it was still in force either for the purpose of availing itself of the stipulations in its favor therein contained or for any purpose whatever.

Besides, the high contracting powers having agreed to submit this claim, together with others arising out of contracts containing a similar clause, to this Commission for adjudication, it is idle for the agent of Venezuela to dispute the express terms of the protocol which *ad hoc* is the supreme law of the land.

This claim having been submitted to the Commission for adjudication, the protocol declares that it shall be decided "without regard to objections of a technical nature or of the provisions of local legislation."

To oppose the jurisdiction of this Commission to assess and award to the claimant compensation for services rendered to the Government and for damages suffered at the hands of the Government by its capricious destruction of the property value of the concession, because the contract of concession under which the company was acting contained a provision that all disputes arising out of its *interpretation* or *execution* should be referred to local tribunals would seem to be nothing more than to submit for the consideration of the Commission a mere technical objection.

Considering the terms of the protocol, it would seem impossible to question the jurisdiction of the Commission on this ground. It is well settled that—

"When citizens of the United States go to a foreign country, they go with an implied understanding that they are to obey its laws and submit themselves in good faith to its established tribunals. When they do business with its citizens or make private contracts there, it is not to be expected that either their own or the foreign government is to be made a party to this business or these contracts, or will undertake to determine any disputes to which they give rise. * * * The case is widely different when the foreign government becomes itself a party to important contracts, and then not only fails to fulfill them but capriciously annuls them, to the great loss of those who have invested their time, and labor, and capital in their reliance upon its own good faith and justice." (Mr. Cass, Sec. of State, to Mr. Dimitry, May 3, 1860; 2 Wharton's Digest, sec. 230, p. 615.)

But, "in any case by the rule of natural justice obtaining universally throughout the world wherever a legal system exists, the obligation of parties to a contract to appeal for judicial relief is reciprocal. If the Republic of Salvador, a party to the contract which involved the franchises to El Triunfo Company, had just grounds for complaint that under its organic law the grantees had by misuser or nonuser of the franchise granted brought upon themselves the penalty of forfeiture of their rights under it, then the course of that Government should have been to have itself appealed to the courts against the company and there by the due process of judicial proceedings involving notice, full opportunity to be heard, consideration, and solemn judgment have invoked and secured the remedy sought.

"It is abhorrent to the sense of justice to say that one party to a contract, whether such party be a private individual, a monarch, or a government of any kind, may arbitrarily without hearing and without impartial procedure of any sort arrogate the right to condemn the other party to the contract, to pass judgment upon him and his acts, and to impose upon him the extreme penalty of forfeiture of all his rights under it, including his property and his investment of capital made on the faith of that contract.

"Before the arbitrament of natural justice all parties to a contract, as to their reciprocal rights and their reciprocal remedies, are of equal dignity and are equally entitled to invoke for their redress and for their defense the hearing and the judgment

of an impartial and disinterested tribunal." (Opinion of Umpire Sir Henry Strong, and Commissioner Dickinson, in El Triunfo Company (Limited) case.)[a]

Assuming for the moment, as seems to be the contention of the agent for the respondent Government, that clause 14 of the contract of June 8, 1894, had a bearing upon the matters in controversy between Venezuela and the company, it must be apparent that the obligations of that clause bore equally and reciprocally upon both parties thereto, and when Venezuela, without resort to the tribunals of the Republic destroyed the value of the concession by the decree of October 5, 1900, and further showed her own disregard of the requirement in question which had been repeated in the settlement agreement of May 10, 1900, by proclaiming on December 14, 1901, the forfeiture and annulment of the extension itself, it is certain that the company, the other party to the contract, was thereby absolved from all obligation if any had theretofore existed on such score.

In any event, Venezuela was competent to waive the restrictive clauses referred to and to submit the disputed matters to the judgment of an independent tribunal, and this she has done, beyond cavil.

Third. It is further objected that it would be inequitable for this international tribunal to consider the claim of the claimant company and to render an award in its favor, because the respondent Government has claims of good origin *to make* against the claimant which she can not substantiate before the Commission.

It is to be noticed that it is not asserted that the respondent is in possession of any liquidated claim against the company which it desires to urge by way of a set-off. If such liquidated claim actually existed it would not be contended for one instant that under the general principles governing submissions to arbitration for settlement in accordance with equity it could not be urged by way of set-off or counterclaim, for to determine a claim according to equity and justice would be but to award in favor of the claimant what was actually his due, and it could not be contended that there was in such case actually due more than the difference between the claim and the offset. But here it is to be noted that Venezuela sets up a mere unliquidated demand which upon investigation may be found, as it doubtless will be, to be without any foundation either in fact or law. And it is particularly to be noted in this connection that never during the negotiations resulting in the settlement of May 10, 1900, nor at any time subsequent thereto until after the presentation of the claimant company's claim to this tribunal, was it ever intimated that the respondent Government possessed counterclaims against the company. The afterthought comes too late, and, if this Commission should give heed to it, it is easily to be perceived that, by resorting to similar plea in other cases presented on behalf of American citizens, the Commission would readily be stripped of all its functions under the protocol. If the counterclaim or offset now asserted for the first time had in fact existed, it should have been suggested at least not later than during the negotiations which resulted in the protocol, and it can not be doubted that ample provision would have been made therein for its consideration and adjustment.

It is certain, however, that the Commission should not refuse to consider and decide the claim which it has jurisdiction of because it can not take into account a possible offset which has no existence in fact.

Fourth. With respect to the item of 100,000 bolivars due as the second installment of cash agreed to be paid under the terms of the settlement of May 10, 1900, it is urged on behalf of Venezuela that same should be rejected, because—

(*a*) A new creditor has been substituted for the former one without the consent of or notice to the debtor;

(*b*) Because Venezuela has the right and should be afforded the opportunity to offset against the same amounts which the original debtor owes to her; and

(*c*) Because, by the terms of the contract itself, the concessionary company agreed that "every question that might arise by reason of that agreement should be submitted to the tribunals of Venezuela for decision, and could never be open to international reclamations."

Referring to the last of these objections first, it is but necessary to call attention to the fact that the clause of the settlement contract referred to is not so broad as is there stated, but that the agreement for submission to the Venezuelan courts is strictly limited to "doubts and controversies which may arise with respect to the *interpretation and execution* of this contract." And it would seem that in no fair or equitable sense has any controversy arisen either with respect to such "interpretation or execution" of the contract, but, on the contrary, it being conceded that the sum mentioned is due by the express terms of the settlement contract, it is sought to avoid payment thereof by asserting an offset or counterclaim which in law was finally settled by the "transaction" itself, and which, at least in liquidated form, has never had any existence in fact.

---

[a] For. Rel. U. S., 1902, p. 871.

The agreement of settlement was executed May 10, 1900. On July 14, 1901, Mr. Russell reported to Mr. Hay that he "had a long interview with the foreign minister on this subject (i. e., the payment of the second installment of 100,000 bolivars), and he admitted that the whole of the 200,000 bolivars had to be paid in gold, and the only reason that Mr. Olcott's name appeared as one of the claimants before the late claims commission was that in accordance with article 2 of the contract the Commission has to fix the date for paying the second 100,000 bolivars."

And again, on July 31, 1901, Mr. Russell cabled the Secretary of State at Washington that the "Government of Venezuela made the proposal to pay 1,000 bolivars a month."

From this it is plain that as late as the last-mentioned date (July 31, 1901) no thought of the existence of a set-off had arisen in the minds of the executive officials of the respondent Government, nor had there been any suggestion that the above amount was not wholly due and payable.

Nor does it seem necessary to answer objection (*b*) further than to refer to the argument heretofore submitted under point No. 3. With respect to objection (*a*), it would seem that the agent for Venezuela must have had in mind some provision of local legislation, regard for which is expressly excluded by the terms of the protocol. As the item is a liquidated one, and the right to recover it had vested, it would seem by all principles of recognized commercial dealing to have been assignable, and was so at least under the peculiar circumstances governing the relation of the assignor and assignee in this case.

All that Venezuela can care for or reasonably demand in respect to such item is that she shall be sure that a payment to the claimant of such amount under the award of this Commission will operate as an acquittance with respect to any and all other claimants whatsoever, and of this there can be no well founded or reasonable doubt, for by the articles of assignment from the Orinoco Shipping and Trading Company (Limited) to the claimant, set forth as Exhibit C,[a] the former company would ever be estopped from asserting any claim, and the receipt of claimant or its assigns, if any, would be a full acquittance.

With respect to the objections made to the claim for damages resulting from the effects of the decree of October 5, 1900, it seems well, for the purpose of avoiding certain misapprehensions which seem to have fastened themselves in the mind of the honorable agent for Venezuela, to review briefly the legislative history of recent years concerning the navigation of the Orinoco River, and also to analyze the terms of the company's concession and the claims now asserted for its breach.

In the first place, the claimant wishes it to be clearly understood that neither it nor its predecessors in interest at any time have laid claim to a grant of the exclusive navigation of the Orinoco River.

An inspection of any good map of Venezuela will disclose the fact that the vast volume of water forming the Orinoco River is discharged into the sea through several mouths, certain of which, particularly the Boca Grande, debouch directly into the Atlantic Ocean, while certain of the lesser mouths, and particularly what are known as the Macareo and Pedernales channels or mouths debouche into the inland sea called the Gulf of Paria. Of the many mouths flowing into the Gulf of Paria, only the two last above named are at all practicable for steamboats of any reasonable capacity. While the Boca Grande is navigable at all seasons of the year by ocean-going craft, during the dry season the water in the river itself and particularly between San Felix and Bolivar becomes so low as to render the navigation of the river by such craft dangerous, if not quite impossible. It is, therefore, apparent that navigation of the river by boats capable of plying through the Boca Grande might, and in fact would be, interrupted at certain seasons of the year because of low river; nevertheless, smaller boats of light draft though incapable of navigating the Boca Grande and its sea approaches, if entrance by the river be had otherwise, could find therein sufficient water to enable them to navigate all the year round. The protected waters of the Gulf of Paria in combination with the Macareo and Pedernales channels or mouths afford just such an opportunity.

In addition to the above, it will also be noted that these mouths or channels afford the shortest route for communication between Port of Spain, Trinidad, and the city of Ciudad Bolívar.

The value of the right to navigate such channels or mouths has long been recognized. On May 14, 1869, the Congress of Venezuela threw "open to merchant steam vessels under foreign flags that undertake the inland navigation of the river Orinoco and its affluents." The Venezuela Steam Transportation Company, an American corporation, built and equipped three steamers with special reference to

[a] Exhibits not printed in this publication.

the navigation of these inland waters, and dispatched them in sections to Venezuela where they were put together and began service. The subsequent history of that venture is not important here, but may be found in the report of the case of the Venezuela Steam Transportation Company in 2 Moore's International Arbitration, page 1693, et seq.

Subsequently, in November, 1892, Mr. Scruggs, then United States minister to Venezuela, sent to the minister of foreign affairs copy of a letter from John H. Dialogue & Son, of Camden, N. J., stating that they were contemplating the building of vessels with which to navigate the bayous of the Orinoco River, but before entering upon such expense they desired to know whether "these bayous as well as the main channel were open to all flags, and especially the American, and whether the condition would likely be permanent," to which Doctor Rojas, then minister for foreign affairs, replied to the effect that foreign vessels bound for Ciudad Bolívar were permitted to enter the Orinoco River by any of the mouths and return likewise by any of them. This assurance, such as it was, having been communicated through the Department of State at Washington to Dialogue & Son, they set about constructing a vessel "especially for the navigation of the Orinoco River through the mouths adjacent to Port of Spain," but unfitted for navigating through the principal mouth. (Foreign Relations of the U. S., 1893, p. 737; also Foreign Relations, U. S., 1894.)

Before the vessel was fully completed, on July 1, 1893, President Crespo decreed that "vessels engaged in foreign trade with Ciudad Bolívar shall be allowed to proceed only by way of the Boca Grande of the River Orinoco, the Macareo and Pedernales channels being reserved for the coastal service; navigation by the other channels of the said river being absolutely prohibited," together with other matters not here important, and this decree was subsequently ratified and confirmed by the Congress of Venezuela.

The validity of such decree was also subsequently affirmed by the high Federal court of Venezuela in the matter of George F. Carpenter, copy of translations of the opinion of the special commission and the sentence of the court in that connection being submitted herewith.

The free navigation of the Macareo and Pedernales channels having thus been prohibited by law, President Crespo, on the 17th of January, 1894, for the various considerations therein recited, entered into the contract for the navigation of those channels which lie at the basis of the present claim, the contract itself, as subsequently approved by the Venezuelan Congress, being spread at large in the memorial at pages 99 to 101 inclusive.

By article 1 of said contract, the concessionary undertook to establish and maintain "navigation by steamers between Ciudad Bolívar and Maracaibo * * * in such manner that at least one journey per fortnight be made, touching, etc. * * *"

By article 3 of the contract, the concessionary agreed to transport, free of charge, the mails, and by article 5 to receive on board of each steamer a government employee to look after the same, and also to transport, at reduced rates, public employees, military men, troops, materials of war, and freights shipped for account or by order of the National Government.

By article 7, the Government of Venezuela bound itself to pay to the contractor (concessionary) a monthly subsidy of 4,000 bolivars, "so long as the conditions of the present contract are duly carried out," and by articles 8, 9, 10, and 11 the company was exonerated from payment of import duties on all machinery, etc., imported for the use of the steamers; was permitted to cut wood from the national forests for construction purposes and fuel; the officers and crews of the steamers were exempted from military service and the steamers were granted in the ports of the Republic the freedom and preferences by law established and "enjoyed by steamers of lines established with fixed itinerary."

By article 12 it was provided that "any one of the steamers leaving Trinidad may also navigate by the channels of the Macareo and Pedernales of the river Orinoco in conformity with the formalities which by special resolution may be imposed by the minister of finance in order to prevent contraband," and by article 6 the Government *bound itself not to concede to any "other line of steamers any of the benefits, concessions, and exemptions contained in the present contract (which are granted) as compensation for the services which the company undertakes to render."*

By article 13 it was provided that the contract should remain in force for fifteen years from the date of its approbation.

It will appear, therefore, that all in the way of a monopoly of navigation which the concessionary or so-called contractor was entitled to claim, and in all in that respect that the claimant company has in fact ever claimed, was the exclusive right of navigation of the Macareo and Pedernales channels by vessels engaged in foreign trade—that is, plying between Trinidad and the Orinoco River ports.

As Trinidad was at the date of the grant and ever since has continued to be a port of transshipment for foreign freights bound from or consigned to Bolívar and other Orinoco River ports, the great value of such an exclusive right is at once apparent.

As required by the terms of the contract, the concessionary established and his assigns maintained until broken by superior force a line of steamers between Ciudad Bolívar and La Guaira, the journey both ways being made via Port of Spain, Trinidad.

The service from La Guaira to Maracaibo has never been established, the Government, after twice extending the time for the establishment of such service (Memorial, p. 104), on May 10, 1900, expressly exempted the concessionary from the obligation to establish the same, and the company on its part renounced its right to receive the subsidy of 4,000 bolivars per month stipulated to be paid by article 7 of the contract (Memorial, p. 104), which subsidy never had been paid and on account of which no claim has ever been urged by the company.

Between Trinidad and Ciudad Bolívar the company established and always maintained the required service of fortnightly trips until about May 31, 1902, when the company's steamer *Bolívar*, while on her regular itinerary was stopped in the neighborhood of San Felix by national authority (J. Sarria Hurtado, president of State of Guayana), and after her cargo had been broached in part and other stores and supplies and sacks of mail had been taken from her, she was ordered to return to Trinidad with an order addressed to the general manager of the Orinoco Steamship Company in the following terms:

"CONSTITUCIONAL PRESIDENCIA EN CAMPAÑA,
STATE OF BOLÍVAR,
San Felix, May 31, 1902.

Ciudad Bolívar, capital of this State, being occupied by revolutionary troops, in arms against the constitutional government of the nation, I have been compelled to transfer the seat of government, in accordance with the express dispositions of the constitution, to this town; and I notify you thereof, in order that, from now onward, and until public peace shall have been reestablished, you abstain from dispatching the steamers at your command for said port of Bolívar, occupied by the enemy, as I shall be otherwise forcibly compelled to impede the said steamers proceeding to their destination.

God and the federation.

J. SARRIA HURTADO."

Against this order to cease dispatching steamers to Bolívar, the general manager of the company, Mr. Turner, on June 6, 1902, protested before the American consul in Trinidad, expressly calling attention therein to the fact that—

"My company is bound by contract with the Venezuelan Government to maintain a fortnightly mail service between Trinidad and the aforesaid port of Ciudad Bolívar; and the prohibition above mentioned prevents the company from carrying out that contract, and exposes the company to other serious consequences. * * *

"Under the circumstances enumerated, I desire, on behalf of my company, that you will have the goodness to communicate by cable with your Government at Washington, with a view of their affording such protection for their rights, contracts, and interests of the Orinoco Steamship Company as they may consider justifiable."

Repeated applications for clearances of the company's vessels for Bolívar having been refused by the Venezuelan consul in Trinidad, the matter was, on August 29, 1902, brought to the attention of the Secretary of State of the United States (August 29, 1902, September 22, 1902, and December 8, 1902, who from time to time communicated through the legation in Caracas with the Venezuelan Government on the subject without avail.

As from the 31st of May, 1902, to the 21st day of July, 1903, Ciudad Bolívar has continuously remained in the hands of the revolutionary troops, and the Venezuelan consul in Trinidad has steadfastly refused clearances for the company's vessels bound for Orinoco ports, and as the general navigation of the river has from time to time throughout the intervening period been interrupted by blockades, both domestic and foreign, and by prohibitory degrees backed with at least a desultory show of force, it would seem that any and all failures to maintain a regular fortnightly service since said 31st day of May, 1902, must be passed without penalty even if since said date the company was under any obligation to the Venezuelan Government, contractual or otherwise, to maintain such service, it being here suggested that the decree of the supreme chief of the Republic of October 5, 1900, which was subsequently ratified and confirmed on the 14th day of March, 1901, by the Venezuelan Congress, destroying as it did the company's exclusive rights of navigation in the Macareo and Pedernales channels, at the same time absolved the company itself from all necessity of compliance on its part with the contract terms.

With respect to so much of the contract as required navigation to be regularly maintained between the Orinoco River and La Guaira (the service to Maracaibo being dropped as above stated), it is to be noted that the company also performed its duty in that respect, as the records of the Venezuelan custom-house at La Guaira will show, until October 19, 1899, on which date the company's steamer *Vencedor*, with which that service was being performed was seized at the port of Porlamar by "men armed with Winchester and Mauser rifles," who boarded the vessel "declaring that they took the steamer for the purpose of placing it at the service of the revolution, which was then in course of development in Venezuela, headed by General Cipriano Castro." The steamer was then dispatched by General Asunción Rodriguez, the chief of the then revolutionary party in Margarita, to Carúpano where she was used by General Castro's adherents as a transport ship for carrying troops and supplies.

The vessel was retained in the possession of the forces of General Castro until February 10, 1900, a period of one hundred and fourteen days, when she was restored to the possession of the company in a badly damaged condition.

The action of the revolutionists in seizing and making use of this vessel was approved by General Castro himself, as was evidenced by the settlement made between Mr. Olcott and the minister of the interior May 10, 1900 (Memorial, p. 104), one of the main items of the company's claims then presented and settled covering the detention of and damage to this steamer.

As a circumstance connecting the two official papers which covered the transaction of May 10, 1900, it is to be noted that at the time it was estimated that it would require one year to repair the steamer and by article 2 of the paper, providing for the six years' extension of the contract of navigation, the company was allowed twelve months from its date within which to renew or "undertake" to make the "twelve voyages annually between the island of Trinidad and La Guaira, touching at the Venezuelan ports according to the itinerary of the east coast." The evident expectation of the parties at that time was that the service would be renewed with the same steamer that had formerly performed it, and a year's time was permitted to the concessionary company within which to make her necessary repairs.

It is insisted, therefore, that not only by the express terms of the navigation contract of June 8, 1894, did the concessionary and his transferees obtain the exclusive right of navigation of the Macareo and Pedernales channels by vessels engaged in foreign commerce, but also that until prevented by *vis major* exercised by, on or behalf of the present existing Government of Venezuela, it fully complied with every obligation imposed upon it by the contract concession in question.

The suggestion that the contract-concession amounted merely to a *permit* to navigate said channels and did not constitute a grant of such right exclusive of all competition on the part of other ships engaged in foreign trade seems to require no further comment or answer than a reference to the document itself, whose terms, rightly construed, must put an end to all discussion on such score.

Points 5 and 7 of the answer of the respondent Government, which consider the relation or want of it between the two separate documents which claimant contends, taken together, constitute the transaction of May 10, 1900, may well be considered together.

It is first suggested by the respondent that the extension of the navigation contract did not figure in the settlement of the claims in any manner, because it is not referred to in the document in which the claims are mentioned, nor can the two papers be bound together by the simple statement of one of the interested parties.

Second, that no allowance should be made for the withdrawal of so much of the concession as was covered by this six years' extension, because the same having been made without consideration given therefor did not constitute a binding contract, and was capable of being withdrawn by the grantor at any time.

While it may be true that in a court of law administering justice according to hard and fast rules and adhering strictly to the prescribed rules of evidence there might be some difficulty in directly connecting the two instruments in question as constituting a single transaction, it is to be borne in mind that this high international tribunal is charged to decide all claims presented to it according to justice, upon a basis of absolute equity and without regard to objections of a technical nature.

With a view of determining the objection so raised in connection with the suggestion made on behalf of the respondent Government, to the effect that the claimant's predecessor on May 10, 1900, agreed to settle and discharge accrued claims amounting to over $550,000 American money, in consideration of the receipt of 100,000 bolivars in cash, and a promise to pay 100,000 bolivars more thereafter, without any other consideration passing, let us examine the situation of both parties as it existed at the time of the transaction.

On June 1, 1899, bills and corresponding vouchers had been presented by the Orinoco Shipping and Trading Company (Limited) to the Venezuelan Government, covering services rendered by the "Red Star Line," then owned by the former company, amounting to $101,163.42. These bills and vouchers were accepted by the Venezuelan Government as correct and payments were made on account thereof as follows:

1899.	Bolivars.
June 2	4,000
August 24	4,000
September 26	6,000
October 6, $20,400 in salt bonds,	

amounting in the whole to about $22,800 paid on account, and leaving then due to to the company a balance of about $77,818.01 of undisputed and indisputable debt. (See Memorial p. 102.)

Subsequent to the dates covered by the above-mentioned account, other services had been rendered by the company to the Government and other sums had on account thereof and on other accounts, such as the seizure and use of company's ships by the Government and damages done thereto, accrued due to the company, the whole including the balance above mentioned, amounting to more than a half of a million dollars.

The company, as was natural, was pressing for payment. General Castro's government, but newly come into power, was but illy supplied with cash funds. The company believed that its concession of the monopoly of navigating the interior waterways of the Orinoco River was valuable and with approaching peace would become more so. The Government, although poorly supplied with cash, had the power to extend this concession and the company was willing to accept such an extension in lieu of cash payment.

Is it to be presumed for one instant that with an acknowledged balance of at least $77,800, in round numbers, due and owing to the company on the first account above referred to, that any sane man would have agreed to settle even with a slow-paying debtor for $20,000 cash and a promise to pay $20,000 at some indefinite time in the future? Why should the Government at the very time that a settlement of the claims on such terms was made agree to extend a monopoly of navigation held by its creditor unless the extension was to go in part payment? It is to be noted that both papers were drawn in the ministry of internal affairs on the same day; that the negotiators were the same in each; that in addition to considering settled all back debts due from the Government to the company, it was agreed by the agent for the company in the "transaction" document to also consider as paid "all services which the company *may continue to render* to the General Government or to the governments of the States up to the 1st of July next."

In the "extension" document it is recited that "Richard Morgan Olcott, attorney and director of the Orinoco Shipping and Trading Company (Limited), having solicited from the National Government an extension of six years of the contract of navigation dated 10th of June 1894 * * * the supreme chief of the Republic, *considering the reasons on which said company bases its petition to be justified*, disposes as follows, etc." It is always open to parties to a contract to show by extraneous evidence the true consideration upon which a contract was founded.

In the sworn memorial it is stated by Mr. Olcott, one of the parties to the transaction itself, that—

"It was agreed that, in full settlement of the claims then accrued, due, and submitted, amounting, as aforesaid, to the sum of $554,550.51, there should be paid to the Orinoco Shipping and Trading Company (Limited), the sum of 200,000 bolivars in coined money, and the above-mentioned contract or concession of the exclusive right to navigate the Macareo and Pedernales channels of the Orinoco River should be prolonged for the period of six years" * * * (Memorial, p. 103).

Mr. César Vicentini deposes that—

"Richard Morgan Olcott, managing director, etc., together with myself, presented to the Government of the United States of Venezuela a statement of account, with vouchers corresponding thereto, showing the sum of $554,550.53 due from the said Government to said Orinoco Shipping and Trading Company (Limited).

"That said accounts were adjusted with the said Government *in my presence* on the 10th day of May, 1900, and the said Government agreed to pay to the said company the sum of 200,000 bolivars in coined money * * * and,

"*In addition to these*, the said Government in consideration and further settlement of the above-mentioned account did grant to the said company a confirmation of the Macareo and Pedernales rivers concession and extended and prolonged said concession for a period of six years * * * etc."

On June 19, 1900, copies of the articles of settlement were filed in the United States State Department.

October 21, 1900, Mr. Russell reported to the Department of State of the United States "that by an executive decree of the 5th of this month all of the mouths of the Orinoco River have been opened up to navigation. * * * On the 6th of October, the day after the passage of the decree, the representative of the Orinoco Shipping and Trading Company came to me with a protest against the passage of such a decree as being a direct attack against the rights of his company and a virtual annulment of the contract under which said company is at present operating. A similar protest was made to the English legation, as the company is registered in London and some of the stockholders are English. * * * In company with the English minister I made an informal call on the minister of foreign affairs. * * * The minister promised to look into the matter, but up to the present I have heard nothing more from him. * * * Some time ago the Orinoco Shipping and Trading Company presented a claim for the loss of two of its ships that had been destroyed while on Government service. This claim was settled last May when the Government paid 100,000 bolivars in cash and agreed to pay 100,000 bolivars more when the commission shall meet next January, which is to consider claims for damages resulting from the last revolution, *and as a further compensation extended the navigation contract of 1894 six years, which contract contained the special privilege of entering the Macareo and Pedernales channels.*"

February 22, 1901, Minister Loomis again reported to the Department of State that—

"There is no doubt, however, that the Venezuelan Government is largely in the debt of the company in a financial way as the result of losses inflicted upon its property and the interruption of its business by the arbitrary seizure of steamers from time to time. * * *

"In making this arrangement the claim of the company for a hundred thousand or more dollars was scaled down by consent to forty thousand dollars *in consideration of the fact* that its *concession should be extended for six years.* The extension of the concession was thought to be of very great value. A few months after the extension was granted the value of the whole contract was destroyed by the opening of the Macareo channel to navigation. This was done without prior notice to the company." * * *

December 14, 1900, Mr. Olcott wrote to the British minister resident in Caracas that—

"On May 10, 1900, I concluded an arrangement with the Venezuelan Government for the settlement of our claims, which amounted to over £90,000. The Government agreed to satisfy that amount in the following manner:

"1. Cash, 100,000 bolivars, received May 10 last.

* * * * * * *

"3. The prolongation for six years of the contract of the 8th of June, 1894.

"When agreeing to the above settlement I took into account almost entirely the value of the extension for six years which the minister intrusted with those negotiations frequently stated in conversation (before my agent here, Mr. C. Vicentini) was 'to the value of at least £100,000 alone.'"

Thus the contemporaneous writings on the subject of this settlement, and the understanding of the diplomatic representatives of the United States seem to be in thorough accord as to the fact that the extension for six years was expressly made in part payment of the large claims which the company held and was pressing against the Government at the time, and the surrounding circumstances but corroborate such understanding.

In view of this state of facts, the suggestion that the extension was without consideration, a mere gratuity, and consequently to be withdrawn at the caprice of the Government without thereby incurring any obligation to make reparation for the damages occasioned by such annulment of a valuable property right, would seem to require no further discussion.

That the settlement of May 10, 1900, as evidenced by the two papers in question was made by competent parties seems not to be denied by the honorable agent for Venezuela, nor indeed could the contrary be maintained. At the date of the transaction General Castro was dictator, holding in his hands the entire governmental power of the Republic. The "transaction" in question, made with the minister of the interior, recites that it was made by the authority of "the supreme chief of the Republic." The decree of October 5, 1900, which annulled the decree of July 1, 1893, prohibiting "the free navigation of the Macareo, Pedernales, and other navigable waterways of the river Orinoco," was promulgated by authority of "Cipriano Castro, general in chief of the army of Venezuela and supreme chief of the Republic."

At the session of the first National Congress held thereafter it was declared that—

"1. The citizen General Cipriano Castro, chief and supreme director of the Liberal Repairing Revolution, deserves the gratitude of the country.

"2. The citizen General Cipriano Castro, as supreme chief of the nation, is creditor of public confidence."

And it was decreed—

"1. To grant, as it hereby does, its solemn approval of all and each of the acts that he has executed as supreme chief of the Liberal Restoration Revolution, as well as supreme chief of the national executive.

"2. This resolution, signed by all the members of the National Constituent Congress, shall be presented to the honorable General Cipriano Castro by a special commission." (Issued in the Legislative Federal Palace at Caracas, on the 6th of March, 1901. Ninetieth year of independence and forty-third from the Federation. Official Gazette of March 14, 1901.)

The transaction, including as it did the extension of the contract of navigation, thus received the confirmation and approval of the National Congress, as did also the subsequent opening up of the prohibited waterways to free navigation.

As bearing in a secondary manner upon the relative rights of the parties to the navigation contract, and also to the transaction of May 10, 1900, reference is respectfully made to the law of Venezuela relating to such matters, which, while stripped of binding force by the terms of the protocol covering submission to this tribunal, nevertheless, may at least be referred to as evidencing the duty of Venezuela in such respect.

By Title IV, section 1, paragraph 3, of the Venezuelan Civil Code of 1896, it is provided as follows:

"ART. 1097. Contracts legally framed have the force of law between the parties. They can not be revoked except by mutual consent, or for the causes authorized by law.

"ART. 1098. Contracts must be executed in good faith and bind not only to the fulfillment of what is expressed therein, but also to all the consequences that flow from the contracts themselves, according to equity, usage, or law.

"ART. 1099. In contracts which have for object the transfer of property or some other right, the property or right is transferred as a consequence of the consent legitimately manifested; and the subject of transfer remains at the risk and danger of the acquiring party, although the conveyance should not have been effected.

* * * * * * *

"ART. 1101. It is presumed that everyone has contracted for himself and for his successors in interest, when the contrary has not been expressly agreed, or when it does not so result from the nature of the contract."

What more concise statement of mutual rights and obligations of parties to bilateral contracts could be found in the legislation of any nation or in the principles of international law than is here expressed?

And further with respect to the rescission of bilateral contracts in the event of default of one or the other of the parties, it is declared by article 1131 that—

"The rescissory condition is always implied in bilateral contracts in the event that one of the contracting parties should not comply with his obligation.

"In this event the contract is not dissolved by the default itself (de pleno derecho). The party in respect to whom the obligation has not been fulfilled, has the choice either to compel the other party to carry out the contract, if that is possible, or to demand its dissolution, in addition to the payment of losses and damages in both cases."

This article is concordant with article 1184 of the Code of Napoleon, which reads:

"The rescissory condition is always to be understood in sinalagmatic contracts in the event that one of the parties should not fulfill his obligation.

"In such case the contract is not dissolved *ipso jure*. The party in relation to whom the agreement has not been fulfilled may elect to force the other party to the performance of the contract, if possible, or to demand the rescission of same and the payment of damages and interest.

"The annulment of the contract must be demanded judicially and the defendant may be granted a period of time proportionate to the circumstances."

And article 1165 of the Italian Civil Code, also concordant, reads:

"The condition of rescission is always to be understood in bilateral contracts in the event but one of the parties should not meet his obligation.

"In this case the contract is not dissolved *ipso jure*. The party in respect to whom the obligation has not been fulfilled has the choice between forcing the other party to the fulfillment of the contract, when this is possible, or demanding its annulment, and in addition compensation for damages in both cases.

"The dissolution of the contract must be demanded judicially and a period may be granted to the obligee according to the circumstances."

And to the like effect are the concordant articles of the German Civil Code, article 160; Spanish Civil Code, article 1124; Mexican Civil Code, article 1465–1466; Holland Civil Code, article 1302; Chilean Civil Code, article 1489; Uruguayan Civil Code, article 1392; Guatemalan Civil Code, article 1467; Bolivian Civil Code, article 1169.

Each and every one of the civil codes founded upon the same system of justice and its administration contemplate and require that in the event of a default on the part of one party to a bilateral contract the other party thereto shall resort to the duly constituted tribunals of the country for the appropriate redress.

The common law of England is not otherwise.

The National Constitution of Venezuela promulgated in 1901, by Title III, section 2, article 17, guarantees the effectiveness of the following rights:

"Second. Property, which shall be subject only to the contributions decreed by legislative authority, in accordance with this constitution, and shall be taken possession of for works of public utility (only) after indemnification and condemnation proceedings."

The Executive decree of December 10, 1892, still in force, prescribes the elaborate judicial proceedings incident to condemnation proceedings.

It being once conceded that a contract of navigation carrying special rights and privileges granted upon reserved conditions of value on account of which the grantee has either rendered services or incurred any debt or detriment constitutes a property right, it is apparent that the grantor can not, even under the local law in force in Venezuela, abrogate the same, even for purposes of public policy or public benefit, without resorting to the methods prescribed by law.

It is suggested in the answer of the respondent Government that, admitting the right of the claimant to recover with respect to the services rendered by way of use and detention of steamers, passages, and the like, such recovery can only be in accordance with tariffs or schedules agreed upon between the parties, the deduction being, as we understand it, no schedules or tariffs had been actually agreed upon between the parties in advance of the service, or perhaps afterwards, no recovery could be had in this case therefor.

In response to this, it seems necessary but to say that the services rendered in the way of carrying freights and passengers were rendered upon the deliberate orders of the Government officials, and in nearly all instances refer to the terms of the contract providing for the reduction from the regular tariffs on Government account.

The regular passenger and freight tariffs were public and notorious. They were or should have been as well known to the Government officials as they were to the private traveler. The demand for services to be rendered in the presence of such existing tariffs must be taken as an acquiescence in the rates so established.

With respect to the per diem charges for the detention and use of company's steamers, it is to be noted that such detentions and use arose not out of any convention between the Government officials and the company's agents but were brought about by the arbitrary orders of and superior forces at the disposal of the latter. Such detention and use of the steamers disarranged and seriously interfered with the orderly prosecution of the company's business, and while it is at once conceded that the claimant is only entitled to recover reasonable compensation for such use, it is submitted that under the circumstances the burden is upon the respondent to show wherein the charges made on such account are unreasonable. In the accounts rendered to and settled by the Government by the transaction of May 10, 1900, similar charges were made for use and detention of the same or similar steamers, and the charges as then made were accepted and settled as above stated, without objection, thus evidencing the acquiescence of the Government in the reasonableness of such charges.

Referring to the item in the claim covering imposts illegally collected and to the reply of the honorable agent of Venezuela to the effect that as said items include payments which were made in the years 1898, 1899, and 1900, they were consequently included in the transaction of May 10, 1900, and therefore should be rejected, the conclusive effect of that settlement upon all claims or items in dispute or which might at the date mentioned have been brought in dispute between the parties is admitted, and this would seem to put an end to the alleged counterclaim of the respondent.

While it is stated in the caption of bill (Cuenta) No. 14 that such imposts "from the 1st November, 1898, to the 31st of March, 1902, amount in the aggregate to $19,571.34," it will be noted on inspection of the detailed accounts and accompanying affidavits that relate to this item that the "illegal charges" therein specified for which recovery is here sought all occurred in the year 1902. Being subsequent in

date to the settlement of May 10, 1902, and not referred to in either paper writing evidencing the same, they would seem not to have been affected by it.

It is further objected on the part of Venezuela that the transfer or assignment from the Orinoco Shipping and Trading Company (Limited), to the claimant company is invalid because not made in accordance with the terms of the contract itself or with requirement of law. The second branch of this objection is answered by the protocol and has been referred to above. The only reference in the contract of June 8, 1894, to the right of transfer occurs in article (13 Mem., 104), as follows:

"This contract * * * may be transferred by the contractor to another person or corporation upon previous notice to the Government. The transfer shall not be made to any foreign government."

By the "contractor" so referred to is undoubtedly meant the original concessionary Ellis Grell, who, after giving previous notice to the Government, transferred the contract to the Orinoco Shipping and Trading Company (Limited). Subject only to the restriction that the contract should not be transferred to any foreign government, it would seem that this transferee might make such further transfers as it might think best without formally giving notice in advance. But, if the Commission should think otherwise, it is to be observed that this requirement as to notice of transfer relates only to the navigation concession itself, which it is above contended was annulled by the decree of October 5, 1900, and the extension of May 10, 1900, was further especially annulled by the decree of December 14, 1901, thus leaving at least on the latter date nothing of the concession itself in existence, while the assignment from the first-named company to the claimant company was only executed on April 1, 1902. It would seem, therefore, that this objection is without force, as it is certain that as the franchise of navigation from the standpoint of the Venezuelan Government did not and could not pass, the condition as to previous notice had no bearing.

The requirement as to notice could have no effect upon the assignment from one company to the other of assets, including book accounts and claims.

In regard to the damages for destruction of the concession-contract, estimated at $82,432.78 per annum, it is objected by the respondent that the estimate "is entirely arbitrary." It would seem to be sufficient in reply to refer to the fact stated in the former brief that the estimate is based upon the settlement of May 10, 1900, when the minister for foreign affairs, acting in the interest of the Republic and serving its ends, put the Government's valuation upon the extension of the concession, and the company accepted it by canceling admitted debts for the total amount thereof. It is also substantiated by the demonstrated earning capacity of the franchise or concession even under adverse circumstances.

When a wanton wrong has been committed by one party upon another, legal tribunals do not aim to minimize the damages which the injured party has suffered. If difficulties lie in the way of ascertaining with exactitude the amount of injury, they should be resolved against the wrongdoer and in favor of the person wronged. If the wrong had not been committed, a mathematical computation of the injury would not have become necessary. It may well be that the value of the concession is even greater than is assumed in the above estimates. A monopoly ordinarily appreciates as business grows in importance and extent.

The amount of capital invested in this business by the company may be, as is stated in the answer, of no concern to Venezuela, she not having overseen nor advised the investment; but it is to be borne in mind that this large capital was outlaid in preparing for and conducting the company's business in a proper manner and, as the company understood it, in accordance with the requirements of the contract. The amount of the investment is given not as a rule by which to measure the award which may be given in favor of claimant, but merely as an element to be taken into consideration in estimating the damages which claimant suffered. With the destruction of the exclusive right to prosecute free from competition a lucrative trade, the capital invested therein largely and necessarily depreciated in value. What is meant by the statement in the answer to the effect that this investment of capital only took place in 1900 "when the contract had already existed for six years, since 1894," and "that during all that previous time the contracting party had not fulfilled his obligations," is not understood, as there does not appear any foundation in the documents heretofore submitted to support such a deduction, and the case shows that the investment was made as occasion required, much of the amount having been invested in the purchase of the "Red Star Company" and the acquisition of the Grell plant, including the contract concession of June 8, 1894.

As the honorable agent for Venezuela in the answer of the respondent has seen fit to refer to the fact that the Government has filed a suit in the local courts against this claimant to recover for damages alleged to have been suffered by it from the alleged failures on the part of the claimant to fulfill its obligations under this contract, it may

not be amiss, by way of showing the value which the Government itself even now attaches to the business connected with the contract, to quote the following extract from the declaration filed in that suit, viz:

"The losses and damages which the defendant company suffered from the non-execution of the fundamental contracts are computed at 18,000,000 bolivars, calculating at 2,000,000 bolivars per annum, the returns which the Government has failed (will fail) to receive in each year for customs revenues of the various ports which should have been joined by the line of steamers which the company bound itself to establish, and this during nine consecutive years; and in addition to this sum 900,000 bolivars, in which are computed the sealed paper and stamps which the National Government has failed to sell for the clearance of vessels, shipments of merchandise, exportation of products, and coasting trade at those various points of the itinerary of the line, during the nine years that have been spoken of, calculating the same at 100,000 bolivars per annum."

Without at all touching upon the merits of that proceeding, it would seem to be in good order to remark that, when considered in the light of such an estimate and of the amount of business which must necessarily be done by the company to produce such revenues, and of the freights to be derived therefrom, the estimate of value placed upon the annulled contract is most modest.

Referring to the demand of the honorable agent for Venezuela for the production of the original documents and vouchers relating to this claim, copies of which have heretofore been submitted to the Commission, I need only say that all of such original documents are at this moment in the custody of the United States legation in Caracas and can there be examined by the honorable agent for Venezuela at his convenience. These papers are also subject to the orders of this Commission, and the agent for the United States will cheerfully comply with any order that the Commission may make in regard thereto.

It may be noted that although the contract-concession of June 8, 1894, was broken by the decree of October 5, 1900, the claimant's predecessor, so far as performance on its part was concerned, elected to consider it still in force until it suffered an actual damage by the passage of an opposition ship laden with cargo through the Macareo channel. Such actual damage does not appear to have occurred until on or about August 2, 1902. Since that date the passage of competing ships laden with cargo and sailing from a foreign port through the Macareo or Pedernales channels has occurred frequently, and this, too, despite the proclamation of June 28, 1902, of the domestic blockade of the Orinoco River ports (harbor masters' certificates). It may be, considering that the claimant's predecessor practically enjoyed the exclusive right of navigation to which it was entitled under said contract, that the practical breach of the contract should be declared to have occurred only on August 2, 1902, when the *Rescue* made her first voyage, carrying freights which properly should have been carried by the Orinoco Steamship Company. If so, then in computing damages for the breach of the concession, the unexpired term should perhaps be computed from said date, rather than from October 5, 1900, as claimed.

It would seem from the proofs submitted that the claimant and its predecessor elected to consider the concession in force until practical damage occurred.

NEUTRALITY.

In the answer of the respondent Government, it is stated that it "wishes to bring to the knowledge of the honorable Mixed Commission that the Orinoco Shipping and Trading Company (Limited) has taken part in the internal affairs of the nation, as is proven by the evidence which I produce, together with sundry publications."

The so-called proof consists of some eleven *ex parte* affidavits, all taken since the date of filing the claim before this tribunal. Although all of these affidavits were taken either in Caracas or at Port of Spain, in Trinidad, at both of which places the claimant was represented by officers or agents, no notice of intention to take the same was given to the claimant, and no opportunity was afforded to cross-examine the affiants.

Each of the affiants is represented as being of Ciudad Bolívar but temporarily resident in the places in which the respective affidavits were made, and no effort is made in the affidavits to afford any clew as to their present whereabouts.

In response to the first set of inquiries of the honorable agent for Venezuela, Timoteo Carvajal states that in May, 1902, he found "at the island of Trinidad all the larger steamers belonging to the Orinoco Steamship Company, and *I was* told in the latter port," etc. Also that—

"All that I have stated is known to me, as well because I have been an eyewitness to many of the events to which I have referred *as because those which I did not witness have been communicated to me by persons who merit entire faith.*"

Alejandro Plaza Ponte states that he was an eyewitness *to the greater part* of the events to which he refers, "and as to those which I did not witness, I know from correspondence which I have received from honorable persons who merit my entire confidence."

Luis Felipe Rojas Fernandez states that he founds his deposition "on the fact that I was either an eyewitness to the events and incidents to which I refer in same, or else they have been related to me by other eyewitnesses who are worthy of belief."

As none of these gentlemen takes any pains to distinguish the occurrences of which he was an eyewitness from those which were merely reported to him by others, it would seem to place the whole of each of the affidavits, even if otherwise competent evidence, in the category of the baldest hearsay.

In the caption of the depositions the honorable attorney-general of the nation, who is also the agent for Venezuela before this Commission, states that he wishes "to prove certain acts ascribed to the foreign concern styled 'the Orinoco Steamship Company,' which was formerly called 'the Orinoco Shipping and Trading Company (Limited),' *acts* performed against the present political order and in open contravention to all the duties of neutrality which foreigners should observe during civil wars."

As the claims of the company against Venezuela are entirely composed either of items covering services rendered to the Government or its officials, or of items of damages for injuries to property or the deliberate breach of a concession of navigation, and contains no item in the remotest degree connected with any supposed breach of the duty of a neutral, it is somewhat difficult to perceive the exact bearing of such proofs in this case.

The specific acts of unneutral conduct sought to be proved seem to be—

First. That in March and April, 1902, the company withdrew from Ciudad Bolívar all the larger steamers belonging to it under the pretext that they were to be repaired at Trinidad, thereby occasioning grave injuries to the Government by reason of preventing the timely mobilization of the forces that were operating against the revolution styled "Libertadora."

Second. That the steamers of the company, after the blockade had been declared, renewed their trips to Ciudad Bolívar, flying a foreign flag, and carried to that port on various occasions ammunition and war materials intended for the said revolution.

Third. That the steamers of the company accepted without protest and carried on board fiscals (customs agents) appointed by Ramon C. Farreras, chief of the revolutionary movement at Ciudad Bolívar.

Fourth. That in the month of March, 1903, the company's steamer *Apure*, and on the 13th of May, 1903, the company's steamer *Guanare* carried munitions of war to Ciudad Bolívar, and that such supplies passed into the hands of the revolutionists.

Assuming each and every one of these accusations to have been fully and satisfactorily proved, and that the facts were material to any issue raised by this claim, still it is submitted the respondent Government has fallen far short of establishing any breach of neutral duty on the part of the claimant or its assignor.

Bearing in mind that the claimant company and its predecessor in interest were citizens of a foreign State engaged in the business of a common carrier by ships plying between an English Crown colony and ports in Venezuela owing no allegiance to the Government of Venezuela and no duty save such as the laws of nations and of the ports at which their vessels called imposed upon them, it is necessary to set up and prove some specific breach of the law of nations before a breach of neutrality is made out.

With respect to the alleged withdrawal of the ships from the Orinoco at a time when the Government officers desired to *use* them for mobilizing troops, it is sufficient to remark that breaches of neutrality have usually been considered to rest in positive acts, not in negative actions. To have placed ships in the service of the revolutionists, by charter or otherwise, while not at all amounting to a breach of neutrality, would nevertheless have rendered them liable to capture and condemnation, but there was no contract or charter relation between the company and the Government of Venezuela which entitled the latter to use the company's merchant ships as transports, and, if for the purpose of preserving them from the fate of the *Nutrias* and the *Vencedor* they were withdrawn from harm's way, such precautionary measures would hardly seem to resemble in a remote degree the acts necessary to constitute a breach of neutrality.

In connection with the charge of removing the steamers from the river, reference is made to the copies of protests and correspondence appearing in the Diplomatic Correspondence.

Charges 2 and 4 may be considered and answered together, the latter appearing to be merely a repetition of the former in more specific form.

That the company's steamers, flying the American flag as an evidence of their ownership and right of protection under consular registrations subsequent to June 28, 1901 (Venezuelan blockade), resumed their trips to and from Ciudad Bolívar, carrying cargo whenever the circumstances would permit, is not denied.

It is fundamental that blockades, to be respected, must be effective and continuously maintained. That the blockade in question was not being effectively maintained on the occasion of the trips complained of, all of which, so far as is now known, were made after the assault upon the Venezuelan navy by allied powers, is evidenced by the fact that the voyages were made without sighting a Venezuelan national force of any kind. In this connection, it is notorious that from the 31st of May, 1902, until the 21st of July, 1903, Ciudad Bolívar was in the effective possession of the so-called revolutionary forces, who had there set up a *de facto* government. Because of this fact the United States of America, in common with other powers, refused to credit a decree of the Venezuelan Government prohibiting communication with that port, unless backed by sufficient force, as being an invasion of the law of blockade.

As to the character of the revolutionaries, whether belligerents or not, opinions may differ, but it is said by a publicist of high repute in discussing belligerency that, while a foreign State evidencing the recognition of belligerency must issue a formal notification of some kind, the most appropriate, perhaps, being a declaration of neutrality—

"A parent State stands in a different position. It can not be expected to volunteer direct recognition. The relation in which it conceives itself to stand to the insurgents must be inferred from its acts. Hence the question arises, what acts are sufficient to constitute indirect recognition. There can be no doubt as to the effect of acts, *such as capture of vessels for breach of blockade or carriage of articles contraband of war*, which affect the neutral directly and in a manner permissible only in time of war." (Hall's Int. Law, sec. 5, p. 38.)

At page 82 of the same work, the author, after distinguishing between the rules governing the relations of nations as belligerent and neutral and those governing the relations between a belligerent nation and a neutral individual, says:

"The only duty of the individual is to his own sovereign; and so distinctly is this the case, that acts done even with intent to injure a foreign State are only wrong in so far as they compromise the nation of which the individual is a member. * * *

"SEC. 25. * * * It has been, and still is, usual (for publicists) to confuse neutral States and individuals in a common relation toward belligerent States; and in losing sight of the sound basis of the established practice they have necessarily failed to indicate any clear boundary of State responsibility. This want of precision is both theoretically unfortunate and not altogether without practical importance. For it has enabled governments from time to time to put forward pretensions which, though they have never been admitted by neutral States and have never been carried into effect, can not be often made without endangering the stability of the principles they attack. * * *

"'It will be found, whether by consulting usage or treaties, *not that trade in articles contraband of war is a breach of neutrality, but that the persons engaged in it are exposed to the confiscation of their goods.*'"

In response to a suggestion from England in 1793, Mr. Jefferson replied: "Our citizens have always been free to make, vend, and export arms; that it is the constant occupation and livelihood of some of them. To suppress their callings, the only means, perhaps, of their subsistence, because a war exists in foreign and distant countries, in which they have no concern, would scarcely be expected. It would be hard in principle and impossible in practice. The law of nations, therefore, respecting the rights of those at peace has not required from them such an internal derangement of their occupations." (American State Papers, For. Rel., Vol. I, p. 147.)

And again in 1855, President Pierce, speaking of contraband of war, said "that the laws of the United States do not forbid their citizens to sell to either of the belligerent powers articles contraband of war, or take munitions of war or soldiers on board their private ships for transportation; and, although in so doing the individual citizen exposes his property or person to some of the hazards of war, his acts do not involve any breach of national neutrality, nor of themselves implicate the Government." (Hall's Int. Law, p. 83–84.)

The carriage of contraband in neutral bottoms in event of capture subjects the contraband alone to confiscation and not the ship. (Hall, p. 692.)

"As a consequence of the doctrine that the goods are seized because of their noxious qualities, and not because of the act of the person carrying them, it is held that so soon as the forbidden merchandise is deposited, the liability which is its outgrowth is deposited also, and that neither the proceeds of its sales can be touched on the return voyage nor can the vessel, although previously affected by her contents, be brought in for adjudication." The *Imina*, 3 Robinson's Rep., 168; Hall's Int. Law, p. 696, and note; Wheaton (Lawrence's) Int. Law, p. 819 et seq.)

Nor does the law of blockade or intercourse with an interdicted port or place differ in civil war from what it is in a foreign war. (Lawrence's Wheaton (2d ed., 1863) p. 846, note.)

So it would seem that even if the companies or either of them in the ordinary course of its business as a common carrier received and transported to a port in possession of a *de facto* government contraband of war, it did not thereby commit any breach of neutral duty, and the voyages having long since ended and the contraband, if any such ever was carried, having long since been deposited, all liability which at no time amounted to more than a possible confiscation of the contraband itself has long since passed away.

The claimant, acting in strict accord with the law of nations respecting the rights and duties of neutrals engaged in trade with the peoples of a foreign port, continues to transport to such port whenever its approaches were free from the danger incident to the presence of an armed force such merchandise as was offered it for carriage. If any arms or munitions of war were carried, it does not appear that any officer of the company was aware of the contents of the packages, and if such knowledge were shown, it would only be necessary to say that the company had the legal right to transport such materials if it chose to assume the risk of detention incident to possible capture and the subsequent confiscation of the contraband of war.

Repeating the incident of the capture of dispatches in 1901 addressed by General Rolando to Colonel Cotua and others and carried on the steamer *Bolívar*, by the second captain, Mr. Rodriguez, it seems only necessary to say that such carriage was in direct contravention of rules 17, 18, and 19 of the company's manual for the government of its employees (copy herewith), and that upon the arrival of Mr. Rodriguez in Trinidad he was at once discharged for his breach and President Castro was formally notified of the fact, the letter of notification being published, presumably with his acquiescence, in the public prints of Caracas at the time.

As to the charge of receiving on board of the steamers without protest the fiscals (treasury agents) appointed by General Farreras at Ciudad Bolívar, it need only be said that the company was dealing with a de facto government at that port. The laws of Venezuela required the steamers plying in the Orinoco to receive and carry such fiscals. When they appeared with the credentials of the de facto government, it was not for the company to question the sufficiency or regularity of their appointment any more than it is the duty or business of a captain of a ship upon entering a customs port to question the regularity of the appointment of the health or customs officer who, properly credentialed, boards his vessel in ordinary course.

The instructive note of Mr. Lawrence found at page 526 of Lawrence's Wheaton (2d ed., 1863) is so directly in point that I may be pardoned for quoting from it *in extenso*:

"Not only are private individuals exempt from penalties for acquiescing in a government de facto, which exercises undisputed sway, and when all protection is withdrawn, from necessity or otherwise, by the previous government; but it is obvious that some police regulations and the administration of justice in every country, even during a revolutionary struggle, are essential to prevent anarchy and its attendant consequences. As Grotius said 'The acts of sovereignty which a usurper exercises, even before he has acquired an established right by long possession or convention, and while his possessory title is unjust, may be obligatory, not in virtue of his right, for he has none, but because there is every reason to suppose that the legitimate sovereign, whether people, king, or senate, would prefer that the usurper should be temporarily obeyed, than that the administration of the laws and justice should be interrupted, and the State exposed to all the disorders of anarchy.' (De Jur. Bel. ac Pac., lib. 1, cap. 4, sec. 15.) No exception was ever taken by the most scrupulous loyalist to the acceptance by Sir Matthew Hale of a seat on Cromwell's bench of judges; nor did it operate as a disqualification of his holding the same position on the return of Charles II."

See also the case of the *Montijo*, 2 Moore Int. Arb., p. 1432 et seq. Also, 11 Opinions Atty. Genl. U. S., 452, cited in case of United States v. Trumbull (48 Fed. Rep., 99; s. c. Scott's Cases on International Law, p. 731). Also the article on "Neutrality," Chap. 21 of Wharton's Digest, Vol. 3, p. 497, Secs. 389, 390, and 391.

In conclusion, I repeat that irrespective of the law on the subject, the suggested breaches of neutrality have no bearing whatever upon this claim, as no recovery is sought for any loss or damage suffered as the result of any supposed breach of neutrality, nor is it desired to enforce any contract made under conditions of hostility to the general government; nor is it perceived how Venezuela can expect to escape a contract debt or other liability by showing that after the debt had accrued the debtor had carried on trade with her enemies.

IRENE ROBERTS CASE.

A government is responsible for the acts of violence and pillage committed by its troops when under the command of their officers.
Claim duly presented on behalf of claimant is not barred by lapse of time before final adjudication or settlement. [a]
Award of $5,000, in addition to actual damage, made for losses that must have been contemplated by the wrongdoers.

BAINBRIDGE, *Commissioner* (for the Commission):

William Quirk, a native citizen of the United States, came to Venezuela in 1867, to engage in the business of raising sea-island cotton. He first rented a small plantation known as "Guayabite," which he worked successfully for about eighteen months. Satisfied that the soil and climate of Venezuela were adapted to the culture of a fine quality of cotton, he succeeded in April, 1869, in interesting several merchants of Caracas, who advanced him money, with the aid of which in that year he raised a profitable crop, and returned the borrowed capital with interest at 12 per cent.

In the latter part of 1869, the firm of H. L. Boulton & Co., of Caracas, contracted with Mr. Quirk to raise sea-island cotton on a larger scale. The agreement was that Boulton & Co. were to provide Quirk with sufficient capital which, added to his own, would enable them to raise the crop and ship it to Liverpool, the net proceeds to be divided equally between them. Pursuant to this agreement a part of the estate known as "Tocorón" in the State of Aragua was rented. Boulton & Co. state:

"Upon this property we found nothing but a house in a very dilapidated condition and the lands most suited to us in a state of forest, for the most part, and the rest covered with tall grass, called gamblot. The first thing we had to do was to make the house habitable for Quirk and his family, then fence in our property, cut down the forest, pluck up the gamblot by the roots, so that it should not destroy the cotton, and repair to a certain extent, sufficiently to preserve our crop, the water courses."

They brought from the United States all the necessary implements and machinery and thirty-four laborers familiar with the methods of cotton raising. The prospects were so favorable that Boulton & Co. finally agreed with Quirk to continue the planting of cotton for three years, two of which they were to participate in and the third to be for Quirk's sole account. On April 19, 1871, they had already taken off the principal part of the crop and were preparing to take in a second, and arrangements were entered into to plant the crop of 1872.

This was the situation when on April 19, 1871, about 300 regular soldiers under the command of General Rodriguez, and constituting part of the army of General Alcántara, the civil and military governor of the State of Aragua, came to Tocorón, took prisoner and tied with a rope Quirk's bookkeeper; took from the stables 6 horses and a mule belonging to Quirk; entered the dwelling house, which they searched; used threatening and abusive language toward Quirk and his family; compelled his wife to deliver up claimant's revolver, and then left the premises, threatening to return and kill the claimant and destroy the place. Mr. Quirk claimed the protection of his flag and besought the officer in command to desist, but was told by the latter that he was

[a] See Gentini case, p. 720; Giacopini case, p. 765; Spader case, p. 161; Tagliaferro case, p. 764.

"carrying out strictly the orders of General Alcántara." After this outrage Quirk considered it unsafe for himself or his family to remain at Tocorón, and he left the next day for Caracas. There he claimed the protection of the President, General Guzmán Blanco, who told him that he could not interfere with or control General Alcántara. Quirk then returned to Tocorón, disposed of his household furniture at a sacrifice, and brought to Caracas his machinery, farming utensils, and his American employees. An inventory and appraisement of the immovable property on the plantation was made on May 5, 1871, by order of the local court, and a valuation placed thereon of 21,265 pesos. The property taken by the troops on April 19 was valued at 1,725 pesos. In June, 1871, Mr. Quirk returned with his family to the United States, where he died on May 25, 1896.

On November 4, 1871, the Government of the United States, through its legation at Caracas, presented to the Venezuelan Government a claim on behalf of William Quirk for the losses and injuries sustained by him as a result of the events above narrated. The claim was the subject of an extended diplomatic correspondence between the two Governments, but no settlement thereof was ever reached.

The United States now presents to this Commission, on behalf of Frances Irene Roberts, administratrix of the estate and sole heir at law of William Quirk, deceased, a claim for the crop and immovable property at Tocorón, based upon the appraisement made in May, 1871; for the value of the property taken away by the troops on April 19, 1871; for the loss upon household and other furniture; for the profit that would have been made on the crop of 1871, and for indirect losses; said claim amounting in the aggregate to the sum of $187,168.03.

The learned counsel for Venezuela in his answer does not controvert the main facts upon which this claim rests, but he raises the following objections:

1. That it does not appear from the proof adduced that the Venezuelan soldiers who caused the injury obeyed orders of their superior officers or that the latter could have prevented the injury; and that therefore the responsibility of the authors of the deed ought to have been first followed up.

2. That Mr. Quirk was only the manager of the estate for Boulton & Co., and that he ought, therefore, in order to fix equitably the amount of the claim, to have produced the contract which he had entered into with said firm.

3. That the claim is barred by the lapse of time.

It is probably true that acts of pillage committed by soldiers absent from their regiments and not under the direct command of their officers do not affect the responsibility of their Government, and that such acts are considered as common crimes.[a] But this was not the fact here. Quirk complained on the day following the outrage directly to General Alcántara, and stated to him that the officer commanding the soldiers had replied to his appeal that his property and himself be respected, that he (the officer) was "carrying out strictly the orders of General Alcántara." It is clear from all the evidence that the troops were acting directly under the command of General Rodriguez, who in turn was acting directly under the orders of the civil and military governor of the State.

The second objection was also raised by the Venezuelan Government in the course of the diplomatic correspondence regarding this claim.

---

[a] See Henriquez case, p. 910.

The United States minister in a note dated April 30, 1872, addressed to the minister of foreign relations, transmitted a letter to him from Messrs. Boulton & Co., setting forth that no written contract existed between them and Mr. Quirk. The learned counsel for the United States attaches to his replication in this case a letter of Boulton & Co., dated January 9, 1872, addressed to the United States minister at Caracas, Mr. Pile, showing the arrangement with Quirk to be that already herein set forth. It provides for a joint enterprise in the raising of sea-island cotton in Venezuela on a somewhat extended scale. Boulton & Co. were to put into the enterprise the principal part of the capital, and were to receive in return not interest on money loaned, but profits produced by capital invested. Quirk was to add thereto his more limited capital, as well as his wider knowledge and experience of the business in a general supervision of the enterprise, and to receive in return not wages or salary for services rendered, but a moiety of the net proceeds of the crop produced.

The Commission has jurisdiction over all claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments. This claim has remained unsettled for over thirty years. It was diligently prosecuted by the Government of the United States in a diplomatic correspondence extending from November 4, 1871, to April 22, 1875, but no final agreement upon the subject was ever reached. The claim arose subsequent to the Commission of 1866, and it did not fall within the jurisdiction of the Commission of 1889. There has been no opportunity for its adjudication by arbitration prior to its submission here. It was brought to the attention of the Venezuelan Government within a few days after its inception. The essential facts which fix the liability of Venezuela were not then and are not now denied. The contention that this claim is barred by the lapse of time would, if admitted, allow the Venezuelan Government to reap advantage from its own wrong in failing to make just reparation to Mr. Quirk at the time the claim arose.

The questions for determination here are the fact of Mr. Quirk's individual loss or injury, the liability of the Venezuelan Government therefor, and the amount, if any, of compensation due.

It is urged that the relation existing between Quirk and Boulton & Co. was that of debtor and creditor. But the tenor of Boulton & Co.'s letter introduced in evidence hardly sustains this contention. The interests of each in the joint enterprise appear to have been distinct and are so regarded in this decision. Boulton & Co. state that they make "no mention of their own losses," as they prefer to put forth "no claim in their own name against the Government of Venezuela." The citizenship of Boulton & Co. is not shown in evidence, and this Commission can not assume jurisdiction of any claim for their losses put forth in the name of a citizen of the United States.

On the other hand, Mr. Quirk was not merely the manager of Boulton & Co. He invested his own capital in the enterprise and was entitled to one-half the profits. The specific amount of his investment is not stated, but from all the evidence it is believed that a reasonably accurate estimate of his pecuniary losses can be made. The property taken by the troops on April 19, 1871, is claimed as his own, and its value is proved to have been 1,725 pesos. For loss on his furniture and his personal expenses he claims the sum of 5,000 pesos.

It appears from Boulton & Co.'s letter that on the date of the injury the principal part of the crop of 1871 had been taken off and preparations were then making for the second crop. An allowance of 2,000 pesos is believed to be a reasonable valuation of Mr. Quirk's share in the profits of this crop. Upon the total sum of 8,725 pesos, interest is allowed at the rate of 3 per cent per annum from January 1, 1872, to December 31, 1903, making the sum of 17,100 pesos equivalent to the sum of $13,154.61 United States gold.

But the responsibility of Venezuela does not end here. The testimony is uniformly to the effect that Mr. Quirk was a peaceable and law-abiding man, engaged in an enterprise of practical benefit to the State as well as to himself. Even General Alcántara on April 27, 1871, certifies to Quirk's "perfect impartial and circumspect conduct," as pertaining to his condition as a foreigner. The evidence is equally clear and uncontroverted that the attack upon him and his family was wholly without justification or excuse. The act was committed by duly constituted military authorities of the Government. It was never, so far as the evidence shows, disavowed or the guilty parties punished. Under these circumstances well established rules of international law fix a liability beyond that of compensation for the direct losses sustained. Other consequences are presumed to have been in the contemplation of the parties committing the wrongful acts and in that of the Government whose agents they were. The derangement of Mr. Quirk's plans, the interference with his favorable prospects, his loss of credit and business, are all proper elements to be considered in the compensation to be allowed for the injury he sustained.

To the amount hereinbefore designated is added, in view of the considerations above mentioned, the sum of $5,000. An award will therefore be made in this claim for the sum of $18,154.61 in gold coin of the United States.

JARVIS CASE.

Payment of bonds issued in consideration of services rendered in support of an unsuccessful revolution against the constituted government of a country with which the United States is at peace, cannot be enforced.

A subsequent contract made in aid or furtherance of the execution of one infected with illegality, partakes of its nature, rests upon an illegal consideration, and is equally in violation of the law.

The decision of the political department of the United States Government that no conclusive evidence as to the existence of a de facto government exists, must be accorded great weight as to the fact, and in any event is conclusive upon its own citizens.

BAINBRIDGE, *Commissioner* (for the Commission):

The memorial states:

1. That on or about the 14th day of April, 1863, the Republic of Venezuela did, for value received, duly make, execute, and deliver unto one Nathaniel Jarvis, a native citizen of the United States, its bonds or certificates of indebtedness in the amount of $81,000, consisting of 81 bonds of $1,000 each, bearing interest at the rate of 7 per cent per annum, payable semiannually, part thereof maturing within five years from the date thereof and the balance within ten years from said date.

2. That thereafter the said Nathaniel Jarvis, being then still the lawful holder and owner thereof, did, for value, duly indorse and deliver the aforesaid bonds unto his nephew, Nathaniel Jarvis, jr., a native citizen of the United States, who remained the lawful owner and holder thereof until the time of his death, which occurred on the 10th day of January, 1901; that the said Nathaniel Jarvis, jr., left a last will and testament, by which he devised and bequeathed all his property to his two daughters, the claimants herein, whereby said claimants became the lawful owners and holders of said bonds.

3. That said bonds were at their maturity duly presented for payment, but that payment of both principal and interest has been most unjustly withheld from the claimants and their predecessors in interest by the Republic of Venezuela, without any legal, equitable, or moral excuse or justification, and that there was on April 14, 1903, justly due and owing to claimants by the Republic of Venezuela on the said bonds the sum of $307,800, principal and simple interest.

4. That no other person has any interest in the claim, excepting that claimants' attorney and counsel, Anderson Price, and one Charles N. Dally are contingently entitled for services to a share or part of the recovery, and that 26 of said bonds have been lost or mislaid and are not now in the possession of claimants.

The bonds upon which this claim is based are in the following form:

[Translation.]

REPUBLIC OF VENEZUELA.

Treasury of the Province of Caracas. For 1,000 dollars.

Bond in favor of Mr. Nathaniel Jarvis, or to his order, for one thousand dollars, money of the United States, payable in the term of five (ten) years counted from this date.

The interest at the rate of seven per cent per annum, which may accrue to the aforesaid sum, shall be paid every six months, the whole in conformity with the resolution of the treasury department issued to-day.

Caracas, April 14, 1863.

The comptroller.

A. EYZAGUIRRE.

The treasurer

M. R. LANDS.

The resolution referred to in the bonds is in the following terms:

DEPARTMENT OF THE TREASURY,
Caracas, April 14, 1863.

Resolved, It appears from the proceedings that Mr. Nathaniel Jarvis, a citizen of the United States of North America, lent to His Excellency Gen. José Antonio Páez, in 1849, the sum of 23,500 hard dollars, in the value of a steamer named *Jackson* or *Buena Vista;* and also, that of 15,450 hard dollars in the amount of 3,000 equipments and 100,000 balled cartridges, the payment moreover having been stipulated with said Jarvis of the amount of 2,458 hard dollars, for various indemnities, all amounting to the sum of 41,408 hard dollars. And the Government, considering that the service rendered by Mr. Jarvis in the period mentioned was very opportune, since its object tended to defend the cause of morality under the auspices of the illustrious citizen, overthrowing the ominous domination that oppressed the Republic, and, moreover, that it would not be just or right that that foreigner who so generously contributed to aid, with uncommon disinterestedness, the triumph of the same cause, whose principles this day prevail under the administration of a great number of citizens who fought for it, should suffer damages for the default of the payment of a claim, to a certain point sacred; and, finally, that the application of said objects to the end designed is justified, the Government resolves that the credit which Mr. Nathaniel Jarvis claims, with, moreover, the interest of 7 per cent per annum, be

admitted. Instruct the auditor-general to notify the treasury of this province to accredit in its account the sum expressed of 41,408 hard dollars, and the interest previous to the liquidation thereof, which shall be satisfied when the embarrassed circumstances of the national exchequer will permit it.

For His Excellency:

ROJAS.

It is a copy.

The subdirector of the department of the treasury.

J. A. PEREZ.

Briefly stated, the facts are that Gen. José Antonio Páez, who had been from 1830 to 1838 the first President of Venezuela, was in 1849 in exile. In that year he undertook an expedition to overthrow the then existing Government of Venezuela. It was in aid of this enterprise that Nathaniel Jarvis, a citizen of the United States, rendered General Páez the opportune service referred to in the foregoing resolution, in the loan of the steamer *Jackson* or *Buena Vista*, the munitions of war and advances of money designated. But the expedition was unsuccessful, and the steamer, munitions, and General Páez himself were captured by the Government within a few weeks. Páez was imprisoned for a time and then was again sent out of the country. He went to New York where he remained until 1858, when he was invited to return to Venezuela. In 1860 he was accredited as minister to the United States. Returning to Venezuela in 1861 he was, on August 29, proclaimed at a public meeting of the citizens of Caracas "supreme civil and military chief of the Republic."

On September 10, 1861, he took possession of the Government as supreme chief of Venezuela and issued a decree containing the following:

The people of Caracas, to whom entire liberty was left to deliberate in the use of their sovereignty, spontaneously ratified this vote and appointed me civil and military chief of the Republic with full power to pacify and reconstruct it under the popular republican form. At La Victoria I was met by the commission sent to present me the vote of the capital (Caracas) and to request my acceptance. But I feel satisfied, fully satisfied, with the uniformity of the vote of Caracas and of this province (Caracas). I am still ignorant of the will of the Republic. National opinion is, and has always been, the guide of my conduct."

The Páez government continued until June, 1863. It was never recognized by the United States as the government of Venezuela. In a dispatch to Minister Culver, dated November 19, 1862, Mr. Seward, Secretary of State, said, referring to the disordered condition of Venezuela:

The United States deem it their duty to discourage that (revolutionary) spirit so far as it can be done by standing entirely aloof from all such domestic controversies until, in each case, the State immediately concerned, shall unmistakably prove that the government which claims to represent it is fully accepted and peacefully maintained by the people thereof.

And furthermore:

This Government has thus far seen no such conclusive evidence that the administration you have recognized (i. e., the Páez government) is the act of the Venezuelan State as to justify acknowledgment thereof by this Government.

On April 24, 1863, ten days after the Jarvis bonds were issued, the treaty of Coche was signed between the representatives of Páez and Falcón providing for a national assembly, which convened on June 17 following and appointed General Falcón President. The Falcón government was subequently officially recognized by the United States.

It is to be observed at the outset of the consideration of this claim that the bonds themselves show that they were issued "in conformity with the resolution of the Treasury Department," issued on the same date. The resolution thus referred to in the bonds states that the consideration upon which they were based was the opportune service rendered by Mr. Jarvis to General Páez in 1849, which service "tended to defend the cause of morality under the auspices of the illustrious citizen, *overthrowing the ominous domination that oppressed the Republic*," and declares that "it would not be just nor right that that foreigner who so *generously contributed to aid*, with uncommon disinterestedness, the triumph of the same cause, whose principles this day prevail under the administration of a great number of citizens who fought for it, should suffer damages for the default of the payment of a claim to a certain point sacred." In view of this fact it is idle to argue that "if an inquiry could now be made as to whether the debt represented by the Jarvis bonds was a legal one it would establish a dangerous precedent," and that "no one would be safe in buying and selling national bonds." The Jarvis bonds and the resolution of April 14, 1863, are indissolubly united, and, construed together, inform the world of the insufficient basis upon which they stand.

These bonds, then, were issued in consideration of the opportune service and generous aid rendered by Nathaniel Jarvis to General Páez in 1849, in the latter's attempt to overthrow the then existing Government of Venezuela. There is not the slightest doubt about that. Nor is there the slighest doubt but that Mr. Jarvis's opportune service and generous aid to General Páez in 1849 were in violation of his duty to his country and in disobedience to its laws. Under the Constitution of the United States a treaty between the United States and a foreign government is part of the supreme law of the land. In 1849 the treaty concluded January 20, 1836, between the United States and Venezuela was in full force and obligatory upon both nations; and by the first article of that treaty it was declared that—

> there shall be a perfect, firm, and inviolable peace and sincere friendship between the United States of America and the Republic of Venezuela, in all the extent of their possessions and territories, and between their people and citizens, respectively, without distinction of persons or places.[a]

The only Venezuela known to international law in 1849 was the recognized Government of that country and with it the Government of the United States was at peace under the treaty. This treaty was binding upon Mr. Jarvis as a citizen of the United States, and he could lawfully do no act nor make any contract in violation of its provisions.

It was also provided in the second section of Article XXXIV of the treaty of January 20, 1836, that—

> If any one or more of the citizens of either party shall infringe any of the articles of this treaty, such citizen shall be held personally responsible for the same, and harmony and good correspondence between the two nations shall not be interrupted thereby, each party engaging in no way to protect the offender, or sanction such violation.[b]

It would seem to be a fair inference from the wording of a resolution of April 14, 1863, and from all the evidence here presented, that Jarvis furnished General Páez with the ship *Jackson*, the 3,000 equip-

---

[a] Treaties and Conventions between the U. S. and Other Powers, 1776–1887, p. 1119.
[b] Idem, p. 1128.

ments, and 100,000 balled cartridges from the United States. Referring to his preparations for the expedition of 1849, General Páez in his autobiography says (vol. 2, p. 469):

Además de los recursos indicados, contaba con un buen vapor de guerra y fusiles *que debían venir de los Estados Unidos.*

It is undisputable that Nathaniel Jarvis, a citizen of the United States, and presumably within its jurisdiction, supplied General Páez with a vessel and munitions of war intended for use in a military expedition or enterprise against a Government and people with whom the United States Government was at peace. The inference is strong, if not irresistible, that Jarvis violated the neutrality laws of the United States in such measure as to have rendered himself liable to a criminal prosecution therefor. (Rev. Stats., secs. 5283 and 5286).

The language of the resolution of April 14, 1863, with regard to Mr. Jarvis's opportune service and generous contribution to the aid of the Páez cause in 1849, precludes the consideration of the original transaction as a mere commercial venture on the part of Jarvis, such as might have been undertaken without a violation of the laws of neutrality. Mr. Jarvis was, according to the evidence, in Caracas at the time the bonds were issued, and the resolution undoubtedly expresses the basis on which he was then urging his claim as well as the true basis of the original obligation.

It is not deemed necessary, however, to determine whether Jarvis violated the letter as well as the spirit of the neutrality laws of the United States. He did violate the treaty then existing between the United States and Venezuela. He did violate the established rule of international law, that when two nations are at peace all the subjects or citizens of each are bound to commit no act of hostility against the other.

In Dewutz *v.* Hendricks, 9 Moore C. B., 586 (S. C. 2 Bing., 314), it was held to be contrary to the law of nations for persons residing in England to enter into engagements to raise money, by way of loan, for the purpose of supporting subjects of a foreign state in arms against a government in friendship with England, and no right of action attached upon any such contract.

In Kennett *v.* Chambers (14 How., 38), the Supreme Court of the United States held that a contract by an inhabitant of Texas to convey land in that country to citizens of the United States, in consideration of advances of money made by them in the State of Ohio, to enable him to raise men and procure arms to carry on the war with Mexico, the independence of Texas not having been at that time acknowledged by the United States, was contrary to the latter's national obligations to Mexico, violated the public policy of the United States, and could not be specifically enforced by a court of the United States. In the course of his opinion in this case, Chief Justice Taney said:

The intercourse of this country with foreign nations, and its policy in regard to them, are placed by the Constitution of the United States in the hands of the Government, and its decisions upon these subjects are obligatory upon every citizen of the Union. He is bound to be at war with the nation against which the war-making power has declared war and equally bound to commit no act of hostility against a nation with which the Government is in amity and friendship. This principle is universally acknowledged by the laws of nations. It lies at the foundation of all government, as there could be no social order or peaceful relations between the citizens of different countries without it. It is, however, more emphatically true in relation to citizens of the United States. For, as the sovereignty resides in the people, every

citizen is a portion of it and is himself personally bound by the laws which the representatives of the sovereignty may pass, or the treaties into which they may enter, within the scope of their delegated authority. And when that authority has plighted its faith to another nation that there shall be peace and friendship between the citizens of the two countries, every citizen of the United States is equally and personally pledged. The compact is made by the department of the Government upon which he himself has agreed to confer the power. It is his own personal compact as a portion of the sovereignty in whose behalf it is made. And he can do no act, nor enter into any agreement to promote or encourage revolt or hostilities against the territories of a country with which our Government is pledged by treaty to be at peace, without a breach of his duty as a citizen, and the breach of the faith pledged to the foreign nation. And if he does so, he can not claim the aid of a court of justice to enforce it. The appellants say in their contract that they were induced to advance the money by the desire to promote the cause of freedom. But our own freedom can not be preserved without obedience to our own laws, nor social order preserved if the judicial branch of the Government countenanced and sustained contracts made in violation of the duties which the law imposes, or in contravention of the known and established policy of the political department, acting within the limits of its constitutional power.

But it is strongly urged here that the nature of the original consideration is immaterial; that the claim is upon the bonds of 1863, not upon the contract of 1849; and that the act of the Venezuelan Government in 1863 in recognizing the obligation and issuing its bonds in payment thereof was the sovereign act of an independent nation and was final and conclusive and binding upon the Venezuelan people and all succeeding governments of that country.

Differences of opinion may possibly exist as to the political ethics which would justify a temporary ruler in paying his personal debts with national obligations; but certainly none can exist as to the legal proposition that a subsequent contract made in aid and furtherance of the execution of one infected with illegality partakes of its nature, rests upon an illegal consideration, and is equally in violation of the law. The opportune service rendered by Jarvis in 1849 in violation of law created no legal obligation on the part of Páez, much less on the part of the Government of Venezuela. And a past consideration which did not raise an obligation at the time it was furnished will support no promise whatever. (3 Q. B., 234; Harriman on Contracts, 33; Bouvier's Law Dict., title Consideration.)

Essentially the argument of claimants is that the bonds are specialties, importing a valid consideration, and that their issuance as the act of the Venezuelan Government is binding upon it. The claimants have endeavored to show that the power in virtue of which the bonds were issued was the medium through which the authority of the State was conveyed and by which it was bound. In this they have failed. So far as the claimants are concerned, the issuance of the Jarvis bonds was not the "act of the Venezuelan Government." It is doubtless true that the question whether the Páez government was or was not the de facto government of Venezuela at the time the bonds were issued is one of fact. But the decision of the political department of the United States Government on November 19, 1862, that there was no such conclusive evidence that the Páez government was fully accepted and peacefully maintained by the people of Venezuela as to entitle it to recognition must be accorded great weight as to the fact, *and is in any event conclusive upon its own citizens.* And certainly the evidence that the Páez government was "submitted to by the great body of the people" was no stronger on April 14, 1863, when the Jarvis bonds were issued and, when as a matter of historical fact, it was encompassed by its enemies and tottering to its fall.

The language employed by Mr. Hassaurek in his opinion in the cases of the *Medea* and *Good Return* (3 Moore Int. Arb., 2739), decided by the United States and Ecuadorian Commission of 1865, may not inappropriately be quoted here. He says:

> A party who asks for redress must present himself with clean hands. His cause of action must not be based on an offense against the very authority to whom he appeals for address. It would be against all public morality and against the policy of all legislation if the United States should uphold or endeavor to enforce a claim founded on a violation of their own laws and treaties and on the perpetration of outrages committed by an American citizen against the subjects and commerce of friendly nations. * * * As the American Commissioner I could not sanction, uphold, and reward indirectly what the law of my country directly prohibits. * * * He who engages in an expedition prohibited by the laws of his country must take the consequences. He may win or he may lose; but that is his own risk. He can not, in case of loss, seek indemnity through the instrumentality of the government against which he has offended.

The claim must be disallowed.

Woodruff Case.

(By the Umpire):

> A provision in a contract made with a nation to the effect that all doubts and controversies, arising by virtue of the contract, should be referred to the local courts of Venezuela and decided according to its laws, and that such doubts or controversies, as well as the decisions of the Venezuelan courts thereon, shall never be made the subject of an international claim, is binding upon the party making such an agreement, and in the absence of a showing that resort was had to the Venezuelan courts for relief, and justice there unduly delayed or denied, the claim can not be considered by an international commission.
>
> This, however, without prejudice to the rights of the claimant's own country to intervene internationally in the case of a denial or the undue delay in the administration of justice.

Bainbridge, *Commissioner* (claim referred to umpire):

On or about the 8th of January, 1859, the Government of Venezuela granted to José M. Rojas, Juan Marcano, John J. Flanagan, and William Hatfield Clark a concession to build a railroad from Caracas to Petare, with the privilege of extending it to Guaranas and Guatire, and authorized the organization of a company or corporation for the purpose of building and equipping said road. Pursuant to this concession a company was organized in Caracas known as the "Compañía del Ferrocarril del Este," or "Company of the Railway of the East," which corporation acquired and held all the rights, powers, privileges, and franchises granted or pertaining to the said line of railway from Caracas to Petare, and its extensions, theretofore held by the parties named in the original concession. The capital stock of the company was fixed at 400,000 pesos for that part of the line from Caracas to Petare, the company having the right to increase this amount in case the road was extended beyond the latter point. The Government of Venezuela was an original subscriber to the capital stock of the company, taking 500 shares and agreeing to pay therefor into the treasury of the company the sum of 50,000 pesos; one-half of said amount was to be paid when all the material for the building of the road should be delivered in Venezuela, and the other half thereof when the railroad should be completed to Petare and open to the public.

On July 10, 1860, a contract was entered into in Caracas by and between Flanagan, Bradley, Clark & Co., a copartnership, successors in interest to John J. Flanagan, William Hatfield Clark, and James F. Howell, of the one part, and José M. Rojas and Juan Marcano, of the other part, which provided:

ARTICLE 1. Flanagan, Bradley, Clark & Co. sell, assign, and transfer by these presents to the Eastern Railroad Company all the materials now in this country for the construction of the said railroad upon the following conditions:

ART. 2. The said Rojas, as president, and Juan Marcano, as treasurer of the Eastern Railroad Company, will issue to order of Flanagan, Bradley, Clark & Co. $90,000, United States currency, in first-mortgage bonds, secured by a first mortgage on the said railroad and all the buildings, effects, and lands which may now or hereafter belong to the said company as per grant of the Government of Venezuela bearing date January 8, 1859.

Article 5 of the contract provided that within one month from its date Rojas and Marcano would deliver to Flanagan, Bradley, Clark & Co. $55,000 of said bonds, whereupon said firm would deliver to Rojas and Marcano the invoices of all the materials for the building of the railroad.

Article 6 provided that whereas Flanagan, Bradley, Clark & Co. were indebted to Congreve & Son for a balance on the iron then in the hands of Boulton & Co., in La Guaira, if they did not settle said amount within ninety days from the date of the contract, Marcano was to pay said balance and hold as his own the remaining $35,000 of bonds and apply the iron to the building of the road.

On the 24th of July, 1860, pursuant to said contract, José M. Rojas, as president, and Juan C. Marcano, as treasurer of the "Compañía de Ferrocarril del Este," executed a mortgage upon the railway, with all its buildings, cars, effects, tools, lands, and all that belonged or might thereafter belong to said company, to secure the bonds provided for in article 2 of the contract. This mortgage is declared to be the only mortgage on said property, and was registered on the date of its execution. On the same date the company issued 90 coupon bonds of $1,000 each, United States currency, bearing 9 per cent interest. The bonds were in both Spanish and English and read as follows:

Republic de Venezuela. Caracas (Sur America.)
Number ——. $1,000.

COMPAÑÍA DEL FERROCARRIL DEL ESTE.

Eastern Railroad Company's first-mortgage 9 per cent coupon bond.

This bond of one thousand dollars, United States currency, is one of a series of ninety of like tenor and date issued to Flanagan, Bradley, Clark and Company by the Eastern Railroad Company and payable to bearer at the office of said railroad company, in the city of Caracas, on presentation of the coupons as they become due, which represent the principal and interest, at nine per cent per annum, and become due: July 1, 1862, $323.33; July 1, 1863, $260.66; July 1, 1864, $243.41; July 1, 1865, $226.16, and July 1, 1866, $208.92.

These bonds are secured by a first mortgage upon said Eastern Railroad from the city of Caracas to Petare and all its buildings, fixtures, equipments, appurtenances, and all the lands belonging to said railroad company as per grant from the Government of Venezuela in the original charter (about 3,500 fanegadas) and bearing even date herewith. If any one of the coupons become due and remains unpaid for ninety days the whole shall be due and collectable upon a wish of a majority of the bondholders.

El Presidente.

José M. ROJAS.

El Tesorero.

J. C. MARCANO.

(Coupons annexed after signatures.)

Of the 90 bonds thus issued 35 were held by Marcano as security for the debt due Congreve & Son for the iron rails, according to the provisions of article 6 of the contract. This left 55 bonds remaining, of which number only 46, according to the memorial, were delivered to Flanagan, Bradley, Clark & Co. The remaining 9 were retained by Rojas and Marcano. The memorialist alleges that he is the holder and owner for valuable consideration of 40 of said bonds and that he is entitled to claim the indemnity in respect of the other 6.

On the 19th of December, 1863, the Government of Venezuela acquired all the rights of the railroad company through a cession made to it by the company, and continued in the sole possession of the road until the 20th day of April, 1864, when the Government transferred the railroad and everything connected therewith to one Arthur Clark, a subject of Great Britain, said Clarke agreeing to deliver into the treasury of Venezuela $80,000 in amount of legitimate public debt of the Government. Subsequently the contract with Clark was annulled or abrogated at the instance of the Government of Venezuela, and the control and dominion over said enterprise and over the property and franchises of the corporation were resumed by the Government.

This claim was presented to the Commission appointed under the treaty of April 25, 1866. The Commission caused the papers to be returned to the United States legation, with the following indorsement thereon:

> Dismissed this day from further consideration for want of the original bonds, or a legalized copy thereof not presented, and further documents equally required, but in no wise affected or invalidated by said action.

The claim was also presented to the Commission appointed under the treaty of December 5, 1885; and this Commission upon consideration and in relation to the claim made upon its docket the following entry: "Dismissed without prejudice to other prosecution of the claim."

The learned counsel for Venezuela insists in his answer that this claim is res adjudicata. But this position can hardly be sustained in view of the fact that the first Commission expressly declared the claim was in no wise to be affected or invalidated by its action in dismissing the case; and that an examination of the grounds on which the second Commission based its dismissal shows that it was because the Commissioners were of the opinion that "the cause of action has been misconceived and proofs therefor not supplied that otherwise might have been forthcoming." The claim is clearly one owned by a citizen of the United States of America which has not been settled by diplomatic agreement or by arbitration, and hence within the jurisdiction of this Commission under the terms of Article I of the protocol.

Various legal technicalities have been and still are insisted upon in relation both to the presentation and the defense of the claim. It is not deemed necessary to review these here. Substantially the facts are that Flanagan, Bradley, Clark & Co. sold, assigned, and transferred to the Eastern Railroad Company all the materials for the construction of said railroad which they had bought or contracted for and brought to Venezuela with which to build the road. In consideration thereof Rojas and Marcano, acting for the Eastern Railroad Company, issued to Flanagan, Bradley, Clark & Co. the 90 bonds of $1,000 each, payable to bearer, and as security for the same executed a mortgage on the property thus sold and also on all other property of the railroad company. Of the 90 bonds thus issued only 46 were actually delivered to Flanagan, Bradley, Clark & Co., and these 46 bonds

undoubtedly represent the estimated value of the property owned by that firm and sold in the manner indicated to the railroad company. Besides the 660 tons of iron rails, for which they owed Congreve & Son and on account of which debt 35 of the bonds were retained by the company, the property delivered by said firm to the company consisted of a locomotive weighing 18 tons, a first-class passenger car, a second-class passenger car, 6 box cars, 4 platform cars, and a hand car.

This was in 1860. Three years later the railroad company transferred to the Government all the property, rights, privileges, and franchises of the company, and on April 20, 1864, the Government as "sole owner of the enterprise of the Railroad of the East," transferred to Arthur Clark all appertaining to the road, and in consideration thereof Clark agreed to deliver to the minister of the treasury of Venezuela within six months 80,000 and odd dollars of the legitimate debt of the Government.

It is a fact not without significance that the amount of "legitimate debt of Venezuela" agreed to be paid to the Government by Clark corresponds with the estimated valuation of the railway material represented by the outstanding bonds, deducting the 9 bonds which appear to have been retained by Rojas and Marcano out of the 90 issued. It would seem not an unfair inference that Venezuela recognized an obligation as to the bonds or as to the material which the bonds represented, and that the conveyance to Clark was subject to his obtaining the outstanding bonds and delivering them to the Venezuela Treasury. Clark indeed made an offer of £3,500 for the bonds through the Venezuelan consul in London on September 16, 1864, to John Bradley. The consul, Mr. Hemming, says:

> To enable him to do this (i. e., carry on the Eastern Railway), the Government have to take up the bonds held by you, and to facilitate matters so that they may at once begin the work, Mr. Clark authorized me to offer you £3,500 sterling for all the bonds in question.

But Clark failed to comply with his contract with Venezuela and it appears to have been afterwards annulled and the property reverted to the Government.

The Government paid Congreve & Son for the rails the sum of 19,264.39 pesos, and the company, on December 19, 1863, turned over the 35 bonds retained on that account to the Government. Liability for the other property delivered by Flanagan, Bradley, Clark & Co. and represented by the 46 bonds outstanding rested upon the same basis, namely, that Venezuela received the property, but no arrangement as to this property was made with the holders of the bonds and, as shown, the contract with Clark was abrogated.

It is true the bonds were secured by the mortgage given by the railroad company, but the bonds are the real indicia of the indebtedness. The Government after December 19, 1863, held the mortgaged property and the claimant elected to rely upon the responsibility of the Government instead of on the security. This he had a perfect right to do.

I am of opinion that an award should be made in this claim in accordance with the foregoing views. As to interest, the legal rate only should be allowed after the bonds had matured.

PAÚL, *Commissioner* (claim referred to umpire):

Henry Woodruff claims from the Government of Venezuela the payment of the value of 46 bonds, representing the sum of $46,000,

issued by a corporation called "Railway of the East," which originated from a concession granted by the Government of Venezuela on January 10, 1859, in favor of Messrs. Juan Marcano, José María Rojas, and Flanagan and Clark, and also claims the interest on said bonds at 9 per cent per annum, from July 24, 1860, amounting to $176,182.42, making a total sum of $222,182.42.

The same claim for the amount represented by the bonds and interest thereon was presented by Woodruff, consecutively to the two mixed commissions created by the conventions agreed upon between Venezuela and the United States of America on April 25, 1866, and December 5, 1885. Both commissions dismissed Mr. Woodruff's claim for want of sufficient proofs in which the responsibility of the Government of Venezuela could be found, but without prejudice for the claimant to prosecute other actions in protection of his rights. This decision, in neither of the two cases, recognized for its cause the lacking of jurisdiction of both commissions to examine and decide upon the claim presented, although Mr. Findlay, Commissioner on the part of the United States, was of the opinion that the Commission of 1889 was lacking in jurisdiction in this case, for reasons mentioned in his opinion, in which he decided that the claim should be disallowed. He states, in his separate decision, the merits of the case as follows:

> As far as these claims (Henry Woodruff and Flanagan, Bradley, Clark & Co., Nos. 20 and 25) are based upon a breach of contract or upon bonds issued in furtherance of the enterprise, we are of opinion that the claimants, by their own voluntary waiver, have disabled themselves from invoking the jurisdiction of this Commission, and for that reason, as well as that the cause of action has been misconceived, and proofs therefore not supplied that otherwise might have been forthcoming, we will disallow the claims and dismiss the petitions without prejudice.[a]

Consequently, by a vote of the majority of the members of the Commission of 1890, charged with the revision of the awards of the Mixed Commission of 1867 that dismissed the claims of Woodruff and Flanagan, Bradley, Clark & Co., both claims were dismissed anew.

The protocol signed at Washington the 17th day of February, of this year, which created the present Commission, establishes in the first article its jurisdiction, limiting the same to the claims owned by citizens of the United States of America against the Republic of Venezuela that have not been settled by diplomatic arrangement or by arbitration between the two Governments; and that are presented through the Department of State or through the United States legation at Caracas. Two requisites are thus necessary for this Commission to examine and decide on a claim owned by an American citizen: First. That it had not been settled by diplomatic arrangement or by arbitration between the two Governments; and, second, that it be presented through the Department of State of the United States or through its legation at Caracas.

What is understood by a claim having been settled or not by arbitration between the two Governments? In my opinion a claim that has been the object of an arbitration between the two Governments and which has been disallowed by a judgment of the arbitral commission charged with its examination, not having found merits enough on which an award against the Government of Venezuela could be founded, has been settled. In no other way could the object of these international commissions be considered as reached, and which object is to

[a] Opinions American-Venezuelan Claims Commission, 1890, p. 450.

decide in a definite manner the disputes arising between the citizens of one of the two countries against the other, causing trouble and complaints in the political relations of both countries. For these reasons treaties and conventions are made and signed, giving exceptional faculties to mixed courts composed of judges appointed by the high contracting parties, and in such virtue the convention made between Venezuela and the United States on the 25th of April, 1866, distinctly contains in its article 5 the following stipulation:

> The decisions of this Commission and those (in case there may be any) of the umpire, shall be final and conclusive as to all pending claims at the date of their installation. Claims which shall not be presented within the twelve months herein prescribed, will be disregarded by both Governments, and considered invalid.[a]

And by article 11 of the convention between the same Governments, of December 5, 1885, which had for its object the revision of the awards of the previous commission, and to examine and decide on all claims owned by corporations, companies, or individuals, citizens of the United States, against the Government of Venezuela, which may have been presented to their Government or legation in Caracas before the 1st of August, 1868, it was agreed that "the decisions of the Commission organized under this present convention shall be final and conclusive as to all claims presented or proper to be presented to the former Mixed Commission."

The explanation given by the Commission of 1890, in the dismissal of the Woodruff claim, that it was so dismissed without prejudice of other actions of the claimant, does not mean that it was left pending between the two Governments. If this meaning should be given to the mentioned decision it would be contrary to the intended object of the Mixed Commission, which special object was to finally settle all the pending claims of corporations, companies, or individuals, citizens of the United States, against the Government of Venezuela.

As it has already been said, the Woodruff claim was not the object of a declaration of lack of jurisdiction by any of the two commissions, but of lack of any foundation that could justify it, and to pretend now that the present Commission should examine anew the same claim for demand of payment from the Venezuelan Government of the nominal value of the same bonds issued by the "Eastern Railway Company" and the interest thereon, changing only the reasons or motives in which the claimant pretends to base the responsibility of the Government of Venezuela, trying to make that responsibility arise from facts and circumstances that were known to the claimant at the time he presented it to the two previous mixed commissions, it would be to consent in the indefinite duration of the claims, as there would not be one claimant that, having had his claim disallowed, could not present it anew, making new arguments on facts not mentioned in the previous trials. Such action would completely destroy the high mission of the arbitration courts, specially in the international disputes that from their nature require the greatest efficiency in the stability of the judgments and their definite settlement.

The Commissioner for Venezuela does not consider as indispensable, after what has been said, to make a study of the new foundation on which Mr. Woodruff bases the same claim presented for the first time against the Government of Venezuela, to the Commission of 1867, thirty-five years ago. The appreciation of the merits of the new

[a] Treaties and Conventions between the U. S. and Other Powers, 1776–1887, p. 1143.

arguments has been already made with a high spirit of equity and with a learned criticism by the Hon. Mr. Findlay, Commissioner for the United States in 1890, in his opinion on this case. I have only to add that the claimant has not presented the proof of any new fact that could in any way change the estimation made by the Commission of 1890, and which caused the dismissal of the claim; on the contrary, this Commission has had occasion to examine the documents existing at the department of fomento, in which is found the decision of the meeting of the shareholders of the Eastern Railway Company, dated at Caracas, on December 19, 1863, and by which said railway was surrendered to the Venezuelan Government, and I have not found in that decision any data showing that said Government did directly accept the responsibility for the payment of the bonds issued by said corporation in favor of the first contractors of the works, that were also the grantees of the same and subscribers for the larger part of the shares. I have also perused the communication addressed on September 14, 1865, by said Henry Woodruff to the secretary of foreign affairs, in which he says:

I have been informed by the Government that my right on the lands, iron rails, fixed effects, and road materials was perfect and indisputable, and it is so by the mortgage of security. Not having the conditions of the mortgage complied with, I have, consequently, perfect right to the ownership of the property. Will the Government now consent so that all things included in the mortgage, after due notice, be sold at public auction to the best bidder and the proceeds applied to the payment of the bonds? I only ask for the consent to exercise a right that has not only been acknowledged by the Government, but insisted on its exercise when they acted against third party. When the interested parties are perfectly in accord in the acknowledgment of the rights, it would not only be insane but an offense to incur the necessary delay and expenses for the judicial foreclosure of a mortgage.

Mr. Woodruff well knew in 1866 his right on the mortgage that secured the payment of the bonds, and he made no use of that right in the subsequent years, though the Government of Venezuela presented no difficulty for the enforcing of such right through the courts. He abandoned the property that was given him as security, and knowing all the particulars in reference to the bonds, he presented his claim to the Commission of 1867, pretending to base the responsibility of the Government of Venezuela on a breach of contract, and alleged a lack of documents that he affirmed were in the possession of the Government of Venezuela, while it appears, from the above-mentioned records, that on October 8, 1864, Mr. Woodruff asked for copies of the deed by which Messrs. J. M. Rojas and Juan Marcano made a cession of the enterprise to the Government, and of the inventory of the railway made in consequence of said cession. The opinion of Mr. Findlay could be quoted here: "We see no reason why immediate and effective proceedings might not have been taken to foreclose or sell the road under the mortgage, which contained full power of sale."

Instead of taking this advice or resorting to any legal step to enforce his claim, either against Clark or under the mortgage, he (Mr. Woodruff) assumes at the outset the position that Venezuela, by what we may call the Rojas-Marcano retrocession had obliterated or rather merged the corporation, and in doing so had assumed the liability of paying the face value of its bonds, with accrued interest to date.

Venezuela had nothing more than an equity of redemption, and had any individual received the assignment it would never have been contended that he became personally liable for the debts of the concern. * * *

Venezuela neither issued nor indorsed the bonds in question. They were issued by the parties themselves, and unless business is done on different principles in

Venezuela than in other parts of the world we must believe that Flanagan, Bradley, Clark & Co., by virtue of the potential ownership of a majority of the stock and their general relations to the enterprise under the construction contract, must have had an equal voice with their associates in the issue of the bonds. When they received them, at least, there could have been no pretense that Venezuela was responsible. Neither by the terms of the concession nor by any contract or connection, direct or remote, express or implied, with the transaction has she assumed any responsibility. * * * Why the claimant did not proceed to make good his debt out of the mortgage security he held, instead of pursuing the claim against the Government upon the theory of merger, is altogether unexplained either by the papers or anything that was said at the arguments.[a]

Has not this claim been already settled by arbitration?

This court of equity could also consider the question whether the bonds represented a nominal value equivalent to the real amount of the debt which caused them to be issued, as it must be remembered that said bonds were issued by agreement between Flanagan, Bradley, Clark & Co., both as original grantees of the enterprise and as contractors, that were to receive a number of shares that represented the largest part of the capital of the company, in payment of their credit as constructors; and that when the 90 bonds for $1,000 each were issued Messrs. Rojas and Marcano retained 35 of them that represented the credit of C. Congrove & Co., of New York, amounting to $19,264.39 (Venezuelan pesos), owed to them for rails. This sum represented one-half of the nominal value of the bonds. Neither Flanagan, Bradley, Clark & Co., nor Woodruff presented to the previous commissions, nor has the latter presented to this, any proof that the nominal value of the bonds corresponded to the just value of the effects and materials for which payment they were a security. All these considerations were, doubtless, the reasons why the Commission of 1890 considered in justice and equity without foundation the pretension to make the Government of Venezuela responsible for the value of the bonds in question and for the interest thereon, and caused the claim of Henry Woodruff to be disallowed.

For the above reasons it is my opinion that said claim has already been the object of a judgment of the Mixed Commission of 1890 and was dismissed for lack of foundation, and therefore this Commission should entirely disallow it for want of jurisdiction to reconsider a case that has been already definitively settled by the Arbitral Commission of 1890.

BARGE, *Umpire:*

A difference of opinion having arising between the Commissioners of the United States of America and the United States of Venezuela, this case was duly referred to the umpire.

The umpire having fully taken into consideration the protocol and also the documents, evidence, and arguments, and likewise all the communications made by the two parties, and having impartially and carefully examined the same, has arrived at the following decision:

Whereas in this case the United States of America presents the claim of Henry Woodruff to recover the face value of 46 bonds of $1,000 United States currency each, together in the sum of $46,000, with interest at 9 per cent per annum from July 24, 1860; and

Whereas these 46 bonds form part of the 90 bonds of $1,000 United States currency which José M. Rojas and Juan Marcano, as president and treasurer of what they called the "Eastern Railroad Company,"

[a] Opinions American-Venezuelan Claims Commission, 1890, p. 445.

issued by order of Flanagan, Bradley, Clark & Co., and which bonds were secured by a first mortgage on the said Eastern Railroad and all the buildings, effects, and lands which may now or hereafter belong to said company as per grant of the Government of Venezuela, bearing date of January 8, 1859; and

Whereas this grant was made by the same contract by which the Government of Venezuela did grant to said Juan Marcano and others a charter for the construction of a railroad from the city of Caracas to Petare, with the privilege of extending the same, and authorizing the organization of a company or corporation for the purpose of building and equipping the same; and

Whereas on the 19th of December, 1863, said José M. Rojas and Juan Marcano made a cession of all the rights of the railroad company to the Government of Venezuela, which the Government transferred the same to one Arthur Clark by contract of the 20th of April, 1864, this contract being annulled later on and the right of the railroad company returning thereby to the Government.

Whereas therefore the question of the liability for the bonds issued through the so-called "Eastern Railroad Company" and secured by mortgage on all the belongings of said company, involving the questions on the rights and duties of this company, and the scope of the transfer of these rights and duties from the company to the Government, from the Government to Arthur Clark, and from Arthur Clark back to the Government, centers in the question about the original rights and duties of said company arising from the contract by which the concession for the railroad and the permission for the organization of the company was granted, this contract has in the first place to be contemplated.

Now whereas article 20 of this contract reads as follows:

> Doubts and controversies which at any time might occur in virtue of the present agreement shall be decided by the common laws and ordinary tribunals of Venezuela, and they shall never be, as well as neither the decision which shall be pronounced upon them, nor anything relating to the agreement, the subject of international reclamation;

And whereas this claim to recover from the Venezuelan Government the face value of the bonds issued through the president and treasurer of the Eastern Railroad Company based on the hypothesis of a transferring of the rights and duties of that company to the Government of Venezuela, doubts and controversies on the liability of the Venezuelan Government in this question must be regarded as doubts and controversies which occur in virtue of said agreement, and certainly are "relating to that agreement."

Wherefore they must be considered as being meant by the contracting parties never to be transferred for adjudication to any tribunal but to the ordinary tribunals of Venezuela, and to be there determined in the ordinary course of the law; and

Whereas bondholders—at all events the original bondholders from whom the later owners and possessors derive their rights—before accepting these bonds knew—certainly ought to know, and must be supposed to know—on what foundation stand the power and the solidity to which they give credit by accepting these bonds;

Whereas at all events those who accept bonds of a company or corporation know—certainly must be supposed to know—the statutes and conditions from which this company or corporation derives its powers

and rights and—as to these bonds—to have adhered to them in regard to the bondholders as well as in regard to the company or corporation the articles of the fundamental agreement have to be applied.

Furthermore, whereas certainly a contract between a sovereign and a citizen of a foreign country can never impede the right of the Government of that citizen to make international reclamation, wherever according to international law it has the right or even the duty to do so, as its rights and obligations can not be affected by any precedent agreement to which it is not a party;

But whereas this does not interfere with the right of a citizen to pledge to any other party that he, the contractor, in disputes upon certain matters will never appeal to other judges than to those designated by the agreement, nor with his obligation to keep this promise when pledged, leaving untouched the rights of his Government, to make his case an object of international claim whenever it thinks proper to do so and not impeaching his own right to look to his Government for protection of his rights in case of denial or unjust delay of justice by the contractually designated judges;

Whereas therefore the application of the first part of article 20 of the aforesaid agreement is not in conflict with the principles of international law nor with the inalienable right of the citizen to appeal to his Government for the protection of his rights if it is in any way denied to him, equity makes it a duty to consider that part of article 20 just as well as all other not unlawful agreements and conditions of said contract wherever that contract is called upon as a source of those rights and duties whereon a claim may be based.

Now, whereas it might be said, as it was said before, that by the terms of the protocol the other party, viz, the Government of Venezuela, had waived her right to have questions arising under the agreement determined by her own courts, and had submitted herself to this Tribunal it is to be considered that even in the case of this claim as a claim against the Venezuelan Government, owned by an American citizen, being a claim that is entitled to be brought before this Commission, the judge, having to deal with a claim fundamentally based on a contract, has to consider the rights and duties arising from that contract, and may not construe a contract that the parties themselves did not make, and he would be doing so if he gave a decision in this case and thus absolved from the pledged duty of first recurring for rights to the Venezuelan courts, thus giving a right, which by this same contract was renounced, and absolve claimant from a duty that he took upon himself by his own voluntary action; that he has to consider that claimant knew, at all events ought to have known, when he bought the bonds or received them in payment, or accepted them on whatsoever ground, that all questions about liability for the bonds had to be decided by the common law and ordinary tribunals of Venezuela, and by accepting them agreed to this condition; and

Whereas it does not appear that any appeal of that kind was ever made to the Venezuelan courts, it must be concluded that claimant failed as to one of the conditions that would have entitled him to look on his claim as on one on which a decisive judgment might be given by this Commission; and

Whereas, therefore, in the consideration of the claim itself it appears out of the evidence itself, laid before the Commission, that claimant renounced—at all events adhered to the renunciation of—the right to

have a decision on the claim by any other authority than the Venezuelan judges and pledged himself not to go—at all events, adhered to the promise of not going—to other judges (except naturally in case of denial or unjust delay of justice, which was not only not proven, but not even alleged) and that by the very agreement that is the fundamental basis of the claim, it was withdrawn from the jurisdiction of this Commission.

Wherefore, as the claimant by his own voluntary waiver has disabled himself from invoking the jurisdiction of this Commission, the claim has to be dismissed without prejudice on its merits, when presented to the proper judges.

SPADER ET AL. CASE.

Claim barred by prescription.[a]
A right unasserted for over forty-three years can hardly be called a claim.

BAINBRIDGE, *Commissioner* (for the Commission):

William V. Spader, claimant herein, states that he is a citizen of the United States of America, and that he is the only child and sole heir-at-law of Mary Elizabeth Franken Spader, deceased, who was the sole legatee under the last will and testament of María Josepha Brion Franken, who was one of the legatees and beneficiaries under the last will and testament of Louis Brion, usually known as Admiral Louis Brion, who died on the 21st day of September, 1821.

The memorial sets forth certain claims against the Republic of Venezuela in favor of Admiral Louis Brion for services rendered by the latter in the cause of Venezuelan independence. Admiral Brion left his estate to his brother, who died shortly afterwards intestate and unmarried, and to his three sisters, María Josepha, Carlota, and Helena. María Josepha Brion married Morents E. Franken in Curaçao, and after her husband's death removed to the United States, where she died in 1859, bequeathing all her estate to her daughter, Mary Elizabeth Franken, who married Krosen T. B. Spader. Mary E. Spader was naturalized as a citizen of the United States April 29, 1865. Charlotte Brion married Joseph Foulke, a merchant of New York. She died in 1846.

William V. Spader claims that he and the other proper parties, heirs of Admiral Brion and citizens of the United States, are entitled to be paid by and to receive from the Republic of Venezuela the two-thirds part of the indebtedness of the Republic of Venezuela to the estate of Admiral Brion.

It appears from the record that this claim originated between the years 1810 and 1821. Citizens of the United States had, or appear to have had, interest in the claim prior to 1846. It was first brought to the attention of the United States Government, so far as the evidence shows, on November 1, 1889. No reason or explanation is given for delay in presentation. It was submitted to the Commission created by the Convention of December 5, 1885, between the United States and Venezuela. The Commission dismissed it without prejudice, for want of jurisdiction. It does not appear in evidence when or in what manner the claim was ever otherwise brought to the attention of the Government of Venezuela.

---

[a] See Gentini case, p. 720; Giacopini case, p. 765, and Tagliaferro case, p. 764.

A right unasserted for over forty-three years can hardly in justice be called a "claim."

Prescription [says Vattel] is the exclusion of all pretensions to right—an exclusion founded on the length of time during which that right has been neglected.

All these sorts of prescription by which rights are acquired or lost are grounded upon this presumption, that he who enjoys a right is supposed to have some just title to it, without which he had not been suffered to enjoy it so long; that he who ceases to exercise a right has been divested of it for some just cause; and that he who has tarried so long a time without demanding his debt has either received payment of it, or been convinced that nothing was due him. (Domat, Civil and Public Law, Bk. III, Tit. VII, sec. 4.)

The same presumption may be almost as strongly drawn from the delay in making application to this Department for redress. Time, said a great modern jurist, following therein a still greater ancient moralist, while he carries in one hand a scythe by which he mows down vouchers by which unjust claims can be disproved, carries in the other hand an hourglass, which determines the period after which, for the sake of peace and in conformity with sound political philosophy, no claims whatever are permitted to be pressed. The rule is sound in morals as well as in law. (Mr. Bayard, Secretary of State, to Mr. Muruaga, Dec. 3, 1886. Wharton, Dig. Int. Law, Appendix, vol. 3, sec. 239.)

While international proceedings for redress are not bound by the letter of specific statutes of limitations, they are subject to the same presumptions as to payment or abandonment as those on which statutes of limitation are based. A government can not any more rightfully press against a foreign government a stale claim which the party holding declined to press when the evidence was fresh than it can permit such claims to be the subject of perpetual litigation among its own citizens. It must be remembered that statutes of limitations are simply formal expressions of a great principle of peace which is at the foundation not only of our own common law but of all other systems of civilized jurisprudence. (Wharton, Dig. Int. Law, Appendix, vol. 3, sec. 239.)

It is doubtless true that municipal statutes of limitation can not operate to bar an international claim. But the *reason* which lies at the foundation of such statutes, that "great principle of peace," is as obligatory in the administration of justice by an international tribunal as the statutes are binding upon municipal courts.

In the case of Loretta G. Barberie *v.* Venezuela, decided by the United States and Venezuelan Commission of 1889, Mr. Commissioner Findlay said:

A stale claim does not become any the less so because it so happens to be an international one, and this tribunal in dealing with it can not escape the obligation of an universally recognized principle, simply because there happens to be no code of positive rules by which its action is to be governed. [a]

The claim is disallowed.

TORREY CASE.

Punitive damages not allowed for arrest by mistake where apology for such arrest is promptly made. Damages, however, for personal inconvenience during period of arrest allowed in the sum of 250 dollars.

PAÚL, *Commissioner* (for the Commission):

Charles W. Torrey claims from the Government of Venezuela the sum of $10,000 for damages caused by unjust arrest at the port of La Guaira, on May 3, 1876, and for personal ill treatment in connection therewith.

---

[a] United States and Venezuelan Claims Commission, 1889–90, Opinions, p. 79; Moore's Arbitrations, p. 4203.

The memorialist bases his pretension on the following facts:

Early in the year 1876 he went to Curaçao for health and pleasure. Shortly after his arrival there he concluded to go to Venezuela to see the country and visit its capital, Caracas. After remaining in Caracas for about a week, he concluded to return to Curaçao by the English royal mail steamer *Severn*. On the 9th of May, 1876, after having obtained a passport with all the necessary visés by the authorized officers of the Venezuelan Government in Caracas, he started for La Guaira, where he intended taking the steamer *Severn* back to Curaçao. With him at the same time were a Mr. Bartram and Dr. Elbert Nostrand, also citizens of the United States. The steamer was lying out in the stream and the three embarked on a boat belonging to said steamer to reach it. While on the way to said steamer they were hailed from shore and ordered back and commanded to report to the civil officer in charge at La Guaira. This officer ordered them all to be imprisoned in the common jail. Torrey claims that he was lodged in a cell with many low prisoners, his cell containing no other accommodation or furniture than a common table and a set of wooden stocks. His request to remain at the hotel under guard, although he was suffering from an attack of inflammatory rheumatism, was arbitrarily refused, and he was taken to jail, and kept in said prison for four hours. He was released through the immediate exertions of the United States consul at La Guaira and the United States representative at Caracas, and he took the steamer bound for Curaçao the same evening at 7 o'clock.

Among the documents presented there is a copy of the communication addressed on the 12th of June, 1885, by the honorable Secretary of State, T. F. Bayard, to Mr. Torrey in reference to his claim, which in itself is sufficient to fix the appreciation that this Commission must make about the fact of the unjust arrest suffered by Mr. Torrey for a few hours in the port of La Guaira. Said communication reproduces the opinion of Mr. Evarts, Secretary of State, contained in a letter addressed by him to the said claimant on April 5, 1877, after having examined the voluminous diplomatic correspondence caused by this affair. This opinion was as follows:

> Though the Department would have preferred that the apology for your arrest should have come directly from that functionary [President Guzmán Blanco], the fact that he ordered his chief of police to make it may be regarded as sufficient. Your complaint may, however, be taken into consideration when diplomatic intercourse with Venezuela shall be resumed, but you [Mr. Torrey] must not expect that this Department will authorize a demand for vindictive damages.

Mr. Bayard, in the same communication, adds:

> Under the circumstances of the case as herein presented, further diplomatic intervention in your behalf is thought to be neither expedient or proper. The Department must, therefore, regard the matter as practically closed, unless you can show to it that the apology made was not a sufficient atonement for the injury done to you, or that an error has accrued to your prejudice in the Department's decision.
>
> This decision need not, however, prejudice your ultimate rights if you see fit to present and support a claim before any international tribunal which may hereafter be organized to take cognizance of cases arising since the award of the late Caracas Commission.

As it appears from the above communications, and as it is plainly shown by the voluminous correspondence between the two departments of foreign affairs of both governments, the incident of the four hours' arrest of the American citizen, Charles W. Torrey, in the port

of La Guaira was the act of a local officer, and was due to special circumstances of that epoch, in which act there was no intention to hurt, by any means the person of an American citizen, and, on the contrary, the same gave occasion for the President of the Republic, Gen. Guzmán Blanco, as soon as he knew of said arrest to order by telegraph that the prisoners be put at liberty, thus:

Gen. J. J. YEPEZ:

Those gentlemen should not have taken passage to Curaçao when their passports were for the United States of America, but I have reason to confide in them; thus, I expect you will put them at liberty, stating to them that you are sorry for what has happened. The steamer has my permission to leave as soon as those gentlemen are on board.

GUZMÁN BLANCO.

In view of the foregoing, and regarding the compensation to be given in this case as limited to reparation for the personal inconvenience and discomfort suffered by the claimant during his brief detention, an award will be made in the sum of $250 United States gold.

GAGE CASE.

(By the Umpire:)

Damages for insults and threatened ill treatment during time of lawful arrest allowed.

BAINBRIDGE, *Commissioner* (case referred to umpire):

This claim arises out of the arrest of the claimant, Gage, and one Fred. R. Bartlett, citizens of the United States at La Guaira, on the evening of December 26, 1900.

The arrest was made by the mayor of La Guaira, who had been a fellow passenger of the parties named on the afternoon train from Caracas, on the ground that the conduct of Messrs. Gage and Bartlett during the trip had been prejudicial to good order, as tending to cause a disturbance of the peace. The testimony as to whether the arrest was warranted or not is conflicting, although it must be said the weight of the evidence is to the effect that the conduct of these men was lacking in discretion. It is not deemed necessary, however, to discuss the evidence upon this point in detail. The claim turns primarily upon the occurrences subsequent to the arrest.

The complaint sworn to by both Gage and Bartlett on December 29, 1900, states:

Arriving at the jail we were placed in a small, dirty, dingy room with eight or ten prisoners and with no accommodations of any kind. Our money and valuables were taken from us as we were registered and searched. Shortly after one of the prisoners offered us a bench and we sat down and conversed quietly together and addressed no remarks to anyone.

After having been seated for about fifteen minutes the chief of the prison guard entered the room and roughly ordered us off the bench, and taking the bench in his hands raised it over Mr. Gage's head and threatened to kill him if he made the slightest protest, abused us, and then left the room. While we were in the prison we asked permission of the chief of the guard and his aids to communicate by telephone with the American consul in La Guaira or the American minister at Caracas. This request was absolutely refused, and we were told that the American consul had been at the jail, but why we did not see him was not explained.

They were released without any trial about half past 7 that evening, their money and valuables being returned to them. Their imprisonment lasted about two and one-half hours.

The citizen or subject of a state who goes to a foreign country is, during his stay in the latter, subject to its laws and amenable to its courts of justice for any crime or offense he may commit in contravention of the municipal laws, nor can the government to which he owes allegiance and which owes him protection properly interpose unless justice is denied him or unreasonably delayed. This principle, however, does not interfere with the right and duty of a state to protect its citizens when abroad from wrongs and injuries; from arbitrary acts of oppression or deprivation of property, as contradistinguished from penalties and punishments, incurred by the infraction of the laws of the country within whose jurisdiction the sufferers have placed themselves.

It would seem too clear for argument that the denial to a foreigner, arrested for an alleged infraction of the municipal law, of the opportunity to communicate with the representatives of his government is an arbitrary act of oppression, amounting, in itself, to a denial of justice. While amenable to the municipal law, the accused is entitled to a speedy and impartial trial, under every civilized code, and to such assistance in securing a prompt and impartial trial, or in other ways as it may be within the province of the representatives of his government to render.

The responsibility of a government for the acts of its administrative officials, injuriously affecting the rights of aliens, is beyond question.

> Presumably, therefore, acts done by them [says Hall] are acts sanctioned by the state, and until such acts are disavowed, and until, if they are of sufficient importance, their authors are punished, the state may fairly be supposed to have identified itself with them.[a]

The conduct of the jefe civil and the police officers at La Guaira in connection with the arrest and detention of Mr. Gage was promptly brought to the attention of the Venezuelan Government by the Government of the United States through its legation at Caracas, and such apology and reparation required as were deemed justified under the rules of international law herein stated. So far as the evidence shows, however, the acts of the civil authorities were not disavowed nor were their authors punished.

For these reasons I am of opinion that an award should be made in this claim.

PAÚL, *Commissioner* (claim referred to umpire):

I regret to disagree with the opinion of the honorable Commissioner of the United States in this case.

The evidence presented is in itself sufficient to prove that George E. Gage misdemeaned himself during his trip from this city to the port of La Guaira, and that he well deserved the punishment inflicted on him upon his arrival at La Guaira by the civil authority, who was a witness to Gage's doings.

Said punishment, which was only an arrest of two and one-half hours, is sanctioned by law, and it is within the power of civil authorities to administer such in a summary way, without previous former trial, in cases of disorderly behavior in public places, or in cases of misdemeanor against other persons. This last was the case of Gage, which happened to be witnessed by the authority. The ill treatment and incommunication with his minister or consul, of which he complains he was a victim during his arrest, only appears from the state-

[a] Hall's International Law, 4th ed., p. 226.

ment of the claimant, whose truthfulness in the present case is doubtful, considering that in the memorial presented by him he goes so far as to distort Dr. N. Zuloaga's declaration, who, according to Gage, said, "In case of an international claim he would side with his Government regardless of truth." The deposition of Elias de León, who was present as interpreter at the interview between Doctor Zuloaga and Gage, states the contrary, and he assures that Doctor Zuloaga said:

> This matter is not worth raising an international question, but if it comes to this, I am a Venezuelan in the first place, and I will be at the side of my Government and will accomplish my duty.

There is a very substantial difference between fulfilling one's duty and being regardless of truth, a difference which the claimant does away with, with a deliberate purpose of diminishing the weight of the declaration of a person who is perfectly truthful by temperament as well as by education, and who had been the gratuitous victim of Gage's sneers and misbehavior which caused him to be arrested.

I am of opinion that the claim of George E. Gage must be disallowed.

BARGE, *Umpire:*

A difference of opinion having arisen between the Commissioners of the United States of North America and the United States of Venezuela, this case was duly referred to the Umpire.

The Umpire, having fully taken into consideration the protocol and also the documents, evidence, and arguments, and likewise all the communications made by the two parties, and having impartially and carefully examined the same, has arrived at the decision embodied in the present award.

Whereas the claimant claims for damages for false arrest and imprisonment, unlawful detention and personal indignities connected therewith; and

Whereas it appears from the declaration of the witnesses, General García, civil chief of the parish of La Guaira, Dr. N. Zuloaga, Dr. A. M. Díaz, Dr. F. Hernandez Tovar, and E. Ochoa, that the claimant, in a first-class carriage of the Caracas and La Guaira Railway, in which he traveled together with the witnesses, behaved in a way as if he were intoxicated and indulged in actions that were liable to disturb the public peace, which declarations do not seem to be sufficiently contradicted by the declaration of the conductor of the railway, who only from time to time walked through the carriages and was not, as the other witnesses were, in his constant society, nor by the declaration of the consul of the United States of North America at La Guaira, who only saw him two and one-half hours later; and

Whereas, therefore, the act of the police officer who ordered claimant to be arrested and put into jail for disturbing public order can not be said to be unlawful, the charge of false arrest and imprisonment can not be admitted.

Whereas, furthermore, the prisoner was let free after about two and a half hours of detention; and

Whereas, in case of a detention by the police in behalf of public safety of a person who in a state of intoxication has disturbed and may be feared furthermore to disturb the public peace, a detention of little more than two hours can not be said to be excessively long, the charge of unlawful detention seems, in case of lawful arrest, not to be founded; and

Whereas the claimant further complains that his request to communicate with the American consul at La Guaira or the American minister at Caracas was refused;

Whereas, however, for this refusal there is only the statement of claimant and his former coclaimant, Mr. Bartlett, whilst out of the letter of the minister of foreign affairs of the United States of Venezuela to the minister of the United States of North America of April 2, 1901, it might be concluded that instead of a formal refusal there might have been only a delay commanded by circumstances, and whilst, on the other hand, it is proved that claimant was let free after about two hours of detainment in consequence of—or in every case posterior to—communications between the Venezuelan authorities and the North American consul at La Guaira and the North American minister at Caracas, the fact of absolute refusal seems doubtfully proved. The rule "in dubiis pro reo" must be here applied in favor of the authorities charged with the unjust refusal.

As to the complaint that the claimant was placed in a small, dirty, dingy, stinking room, this is met by the declaration on behalf of the Venezuelan authorities that he was conducted to the only establishment of correction in La Guaira, whereas it has to be kept in mind that this kind of establishments will almost nowhere seem comfortable for persons of claimant's social position.

As regards the further ill treatment claimant complains of.

Whereas for this likewise the only evidence is the statement of the claimant and his former co-claimant, Mr. Bartlett, but

Whereas it has to be considered that, from the nature of the facts as to the treatment of prisoners by their gaoler, it will always be difficult to find other witnesses besides the prisoners themselves; and whereas it has further to be considered that not only the Venezuelan authorities did not deny the facts, but that there is no trace of these authorities investigating the facts and thus trying to undo the charge that was brought up against them; and

Whereas this Commission has to investigate and decide the claims that are brought before it only upon such evidence and information as shall be furnished by or on behalf of the respective governments;

It seems that the sworn declaration of the claimant and Mr. Bartlett, as presented in their behalf by the United States Government, not contradicted or debilitated by any other evidence or by any intrinsic defect, can not be set aside; and

Whereas the ill-treatment by the officials for which the government is liable, and on which the claim is founded, exists in insults and in menaces that were not carried out, a sum of $100 seems a just reward, which sum is hereby allowed to the claimant.

ANDERSON CASE.

The word "owned" as used in the protocol must refer to claims of American citizens owned at the time of the signing of the protocol.

BAINBRIDGE, *Commissioner* (for the Commission):

At the time of the Venezuelan war for independence, Domingo Hernandez and María Simana García, Spanish subjects, were compelled to emigrate from Venezuela and their properties therein were confiscated by the Government. In payment for the properties thus taken

the Government of Venezuela on December 21, 1846, issued to these parties several bonds, bearing interest at 3 per cent per annum from June 22, 1847. The parties named removed to the city of Humacao, island of Porto Rico, where they died, leaving part of said bonds to Fernando Hernandez y García, who died in February, 1896, leaving said bonds to his son, Fernando Hernandez y Miguene. On the 18th of June, 1903, the latter conferred—

a general and special power of attorney, drawn as required by law, in favor of Mr. Joseph Anderson, jr., resident of Porto Rico, citizen of the United States of America, and a lawyer by profession, so that he might, in the name and as representative of the appearing party, and as owner of said 5 bonds, which he cedes and transfers to him in the legal way, *so that he may claim the payment* of the same, including the corresponding interest before the Commission named to that effect.

The United States now presents to the Commission on behalf of Joseph Anderson, jr., a claim, based on said 5 bonds, amounting to 37,250 pesos, principal and interest.

The convention constituting this Commission signed at Washington on the 17th of February, 1903, provides:

"All claims owned by citizens of the United States against the Republic of Venezuela * * * shall be examined and decided by a mixed commission," etc.

Claims owned when? Clearly the object of the convention was to provide a method of settlement by arbitration of claims against the Republic of Venezuela owned by citizens of the United States at the time of its negotiation. No other claims could have been within the contemplation of the high contracting parties, and jurisdiction of no other claims is conferred by the convention upon the Commission.

It is neither proved nor even alleged that this claim was owned by a citizen of the United States on or prior to February 17, 1903. The claimant Anderson did not become the owner of it until June 18, 1903, if, indeed, from the evidence presented here he can rightly be said to be the owner at all.

The claim is therefore dismissed, without prejudice, for want of jurisdiction.

THOMSON-HOUSTON INTERNATIONAL ELECTRIC CO. CASE.

Commission has no jurisdiction to decide claims against municipalities.

PAÚL, *Commissioner* (for the Commission):

This company, as claimant, presents itself to this Commission, pretending that the Government of Venezuela should be made directly responsible for the payment of the balance of a credit against the municipality of the city of Valencia, amounting to 48,005.28 bolivars up to May 30, of this year, for the service of public electric lighting for previous years and continued up to date by said company, under its contract.

Among the documents presented there is a copy of the original contract between the national executive and Miguel J. Dooley, dated September 21, 1887, granting to the latter, for the term of 25 years, the exclusive right to establish in the territory of the Republic the electric-light system, the grantee having to make special arrangements with the different municipalities for the establishment of the electric lighting in their respective localities.

From the copies of divers arrangements made with the municipal board of Valencia, annexed to the memorial, it appears that said corporation acknowledges as correct the balance due to the company, presented for collection, and found, in accordance with the corporation's books, said corporation claiming at the same time that the company owed, on its side, up to June 26, 1902, the sum of 2,333.35 bolivars for municipal taxes of 1,000 bolivars per annum levied by said corporation on the electric light company, from October 15, 1901. The Thomson-Houston International Electric Company denies to the municipality of Valencia the right to levy an annual tax for the exercise of their industry, basing their arguments on the terms of the original grant of the national government, that in article 4 it states that the said industry would be exempt of the payment of any national, state, or municipal taxes.

The account kept by said company with the municipality of Valencia, up to May 31, 1903, has been presented to this Commission, and said account shows that the company has been receiving lately (in the months of February, March, April, and May) cash payments on account amounting to 21,280 bolivars, and the company from the month of March reestablished the public lighting service of 50 arc lights that had been suspended from June, 1902, until February, 1903. This circumstance proves that the business relations between the Thomson-Houston International Electric Company and the municipality of Valencia were in activity by a mutual agreement, and it can not be understood why said company pretends to claim from the national government the payment of the balance of a current account kept with a municipalty of one of the federal states whilst the interested parties kept in activity the credit and debit of their account.

This Commission ought to dismiss this claim for lack of jurisdiction, without prejudice to the claimant.

BULLIS CASE.

Every nation whenever its laws are violated by any one owing obedience to them, whether he be a citizen or alien, has a right to inflict the prescribed penalties upon the transgressor, if found within its jurisdiction, provided always that the laws themselves and the penalties prescribed are not in derogation of civilized codes.

BAINBRIDGE, *Commissioner* (for the Commission):

Henry C. Bullis, a native-born citizen of the United States, in August, 1900, and for nearly two years previous thereto, was employed as chief mechanical and electrical engineer by the Electric Light Company of Maracaibo, Venezuela. Some of the employees of the company were sympathizers with the revolutionary party then making preparations for an uprising. Quantities of bombs, cartridges, and other munitions of war were brought to the electric-light works, stored there, and taken from there for distribution throughout the city to members of the revolutionary party. Some of the bombs were found by the Venezuelan authorities at the electric-light works in a room to which Bullis had a key, and in his private residence several firearms and a quantity of cartridges for Mauser rifles were found.

Bullis was arrested charged with a violation of the laws of Venezuela. He was tried in the municipal court of Santa Bárbara, convicted, and

on November 8, 1900, was sentenced to an imprisonment of three months in the public jail. The case was appealed to the district court of Maracaibo, and the sentence of the lower court was affirmed on November 26, 1900, the court stating, in its judgment, that "the guilt of said Henry C. Bullis is plainly proven." Through the intervention of the United States legation at Caracas, Bullis was liberated two weeks before the expiration of his sentence.

A claim is here presented on behalf of Bullis in the sum of $50,000 for wrongful arrest and imprisonment.

A careful examination of the evidence presented in this case convinces the Commission that Bullis was arrested, tried, and convicted in strict accordance with the laws of Venezuela, to which he was at the time subject, and in conformity with the usual procedure of its courts; that his trial was not unnecessarily delayed; that he was provided with counsel; that he was allowed to communicate with the representative of his Government; that there was no undue discrimination against him as a citizen of the United States, nor was there, in his trial, any violation of those rules for the maintenance of justice in judicial inquiries which are sanctioned by international law. It does not appear that he was subjected to any unnecessarily harsh or arbitrary treatment during his imprisonment.

The respondent Government has incurred no liability to this claimant. Every nation, whenever its laws are violated by anyone owing obedience to them, whether he be a citizen or a stranger, has a right to inflict the prescribed penalties upon the transgressor, if found within its jurisdiction; provided always that the laws themselves, the methods of administering them, and the penalties prescribed are not in derogation of civilized codes.

The claim must be disallowed.

MONNOT CASE.

Where reasonable inquiry would have revealed that no suit would lie on the part of the Government for property alleged to have been wrongfully imported, an action for the damages caused by such suit will lie.

BAINBRIDGE, *Commissioner* (for the Commission):

The claimant is a native citizen of the United States. In November, 1899, he established a store at Amacura, British Guiana, for the purpose of supplying men employed by him in collecting balata gum, as well as for the sale of supplies and a general trading business. The town of Amacura is located in the territory awarded Venezuela by the Paris court of arbitration. On December 4, 1900, during Monnot's absence from Amacura, a commissioner of the collector of customs at Ciudad Bolívar came to Amacura, seized claimant's goods, and closed his store. A suit was initiated against Monnot before the judge of finance in Ciudad Bolívar on the charge of smuggling certain merchandise, but it was shown at the trial that the last shipment of goods received by him was on October 19, 1900, while the territory was still in British possession; whereupon a decree of dismissal was entered in the action on February 8, 1901, and upon appeal to the supreme court of finance in Caracas the judgment of the lower court was affirmed on March 16, 1903. The claimant states that in January, 1901, his representative having been expelled from Amacura, the Venezuelan author-

ities took and sold the greater part of his goods and removed the balance from his store; that as he had no means of supplying the large gangs of men employed by him with goods, and who were largely indebted to him for advances in cash and supplies, they took advantage of the situation and ran away, taking with them the gum they had gathered. He also claims that he had engaged men for the season of 1901 and was unable to put them to work, and as a consequence lost the profits for that year.

Mr. Monnot summarizes his claim as follows:

(1) Value of goods seized as per inventory	$2,433.97
(2) Amount lost in advances made to balata gatherers who ran away	5,974.07
(3) Value of the balata gum stolen by said men, 64,800 pounds, at 50 cents per pound	32,400.00
(4) Salaries paid to employees since December, 1900, to February, 1901, 3 months, at $225 per month	675.00
(5) One breech-loading shotgun and one revolver taken from my representative	135.00
(6) Expenses occasioned by the case, such as traveling	2,500.00
(7) Attorney's fees in Ciudad Bolívar, as per receipt, 7,800 bolivars	1,500.00
(8) Indemnity for personal time, attention, inconvenience, etc., occasioned in defense of the case	10,000.00
(9) Indemnity for the loss of the gathering season 1901, for which arrangements and contracts had been made	52,000.00
(10) Indemnity for the loss of all business prospects of my enterprise at Amacura	100,000.00
	207,618.04
Or less amount obtained by sale of goods remaining, sold by order of the court of Hacienda, paid my agent at Ciudad Bolívar, November 4, 1901	936.92
	206,681.12

The learned counsel for Venezuela interposes as a defense to this claim that the proceeding of the revenue officers in seizing the claimant's goods was in perfect accord with local legislation. But it is evident from the record in the case that a reasonable inquiry would have disclosed the fact that Monnot had imported the goods prior to the time the Government of Venezuela took possession of the territory. Mr. Monnot's representative testifies that at the time he made "energetic protests" against the seizure.

Only partial restitution was made to the claimant after the dismissal of the case. He is entitled to compensation for the proximate and direct consequences of the wrongful seizure of his property. In the similar case of Smith *v.* Mexico, decided by the United States and Mexican Commission of 1839 (4 Moore International Arbitrations, 3374), an award was made for the value of property lost or destroyed, pending the judicial proceedings, with a reasonable mercantile profit thereon.

Items 1, 4, and 5 of his claim are allowed. To this amount is added the sum of $2,000 for expenses incurred by him in consequence of the suit. From this total of $5,233.97 must be deducted the sum of $936.92, the amount obtained by sale of the goods restored by order of the court. Interest is allowed upon the balance of $4,297.05, at 3 per cent per annum, from December 4, 1900, to December 31, 1903, the anticipated date of the final award by this Commission.

As to the remaining items of the claim, the evidence is insufficient to establish any liability therefor on the part of the Government of Venezuela, and they are hereby disallowed.

BANCE CASE.

A receiver in bankruptcy only acts as administrator of the property of the bankrupt party, and individual credits can not be considered as the private property of any creditor.

Claim dismissed without prejudice.

PAÚL, *Commissioner* (for the Commission):

Dr. J. B. Bance, as receiver in the bankruptcy of Ernesto Capriles, claims from the Government of Venezuela, on behalf of Weeks, Potter & Co., Seabury & Johnson, and Johnson & Johnson, American creditors of this bankruptcy, the sum of 15,576 bolivars, which is the proportionate amount corresponding to them in a credit of 200,000 bolivars, held by Capriles against the Venezuelan Government, which credit is now judicially in the hands of the receiver for its collection.

The failure only deprives the bankrupt party of the administration of his property, which then goes to his creditors, represented by the receiver, but in no way does it alter the essence of the property, rights, and actions, which continue to belong to the said bankrupt until an agreement is arrived at, and, failing this, until the final liquidation and adjudication of the property amongst the creditors in proportion to their claims and according to their rank as judicially classified.

Ernesto Capriles, being a Venezuelan, all his property, rights, actions, and liabilities in the bankruptcy case are governed by the Venezuelan law, and are subject to the procedure and decision of the tribunal under which the bankruptcy is investigated.

The receiver, representing the creditors, only acts as administrator of the property of the bankrupt party, and it is not possible to consider any individual credits from the total estate as the private property of any one creditor.

For the above-mentioned reasons the collection of a credit originally owned and still owned by a Venezuelan citizen can not be admitted before this Commission, and therefore this claim must be dismissed for want of jurisdiction, without prejudice to the claimant as representative of the creditors of Capriles in his capacity of receiver.

UPTON CASE.

Prayer that Government be compelled to acknowledge on its records claimant's performance with requisites of his contract with Government dismissed for want of jurisdiction.

The taking of private property for public use involves an obligation to compensate the owner.

A person assumes all risks, as well as advantages, of his residence abroad.

BAINBRIDGE, *Commissioner* (for the Commission):

On December 23, 1892, the Government of Venezuela granted a concession to José Trinidad Madriz for the "canalización y navigación por vapores calado del Río Tocuyo," and on the day following Madriz assigned said contract and concession to José Rafael Ricart. On May 1, 1897, the claimant herein, a native citizen of the United States, bought from Ricart, previously authorized by the Government to make the transfer, said concession and all rights and privileges connected therewith and granted thereby. It is alleged that all the foregoing instruments were duly recorded as provided by law.

The claimant avers that the concession referred to is of great value, to wit, more than $1,000,000, and that if in the future by reason of insurrection or other cause the Government of Venezuela shall violate the terms of said contract, or revoke it in fact or by obstruction to its operation, he would be damaged in that sum. He states, however, that he has heretofore ever found the Government inclined to recognize and in fact recognizing its obligations under and the validity of said contract. He alleges that he has fully complied with all the terms, conditions, and requirements of the concession on his part.

He asks as a preliminary item of his claim that this Commission shall establish as of record for the future the fact and decision confirming the acts of memorialist, and directing the Government of Venezuela to make acknowledgment upon its official records of his compliance with the terms of the contract.

In regard to this item of the claim, it is sufficient to state that the Commission has no jurisdiction to grant the relief asked. It is clearly not a "claim" within the meaning and intent of the protocol of February 17, 1903, constituting this Commission.

The remaining items of the claim are enumerated as follows:

(*a*) Loss of the launch *Protector*	$3,500.00
(*b*) Loss of steel lighter	4,002.25
(*c*) Loss of steamer *Parupano*	8,714.75
(*d*) Loss of 575 sacks of coffee and all chattels at El Salto de Diablo	10,015.00
(*e*) Loss of money by expulsion of colonists	3,988.43
Total	30,220.43

(*a*) The steam launch *Protector* was bought by the claimant for his use in making trips from Puerto Cabello to the Tocuyo River and along the coast and had been thus used for a year or more. The boat was 40 feet long, 8½ feet beam, and 3½ feet draft. In 1900, while the claimant was in the United States, certain revolutionists armed and equipped a steamer on Lake Valencia and used her to molest the Government, whereupon Gen. Federico Escarra, administrator of the maritime customs at Puerto Cabello, seized the *Protector* against the protest of claimant's agent for the purpose of putting her on flat cars on the English railroad to take her to Lake Valencia, where, armed with Government guns and troops, she was to be used against the steamer of the revolutionary party. In transporting the launch to the railway she was so badly damaged by careless or inefficient handling as to be rendered totally useless.

Claimant alleges that she could not be repaired at Puerto Cabello, and that although he has diligently endeavored to do so, he has been unable to sell the boat or any part thereof; and he claims for her destruction the sum of $3,500.

It appears from the evidence that the Government paid the expenses of removing the launch from the streets of Puerto Cabello to a vacant lot where, it is alleged, the boat has remained absolutely useless ever since.

The seizure of the launch may have been justified by the necessities of the State, but it was a taking of private property for public use and involved the obligation of just compensation to the owner. The evidence is sufficient as to the fact of the taking of the boat and that as a result thereof it was rendered useless. But as the launch appears to have some value, and as it still remains the property of the claimant, an award of $3,000, with interest thereon at 3 per cent per annum

from October 15, 1900, to December 31, 1903, is hereby made as compensation for the loss or damage sustained by the claimant upon this item.

(*b*) The claimant states that he is the owner of a duplicate steel hull with boiler intended for a flat-bottomed stern-wheel steamer or for use as a lighter, which was, in 1902, mounted on blocks and covered in the yard of the electric-light company at Puerto Cabello. In July of that year the military authorities of the Government, in order to resist an attack by revolutionists upon the city, constructed a line of barricades, and finding the said hull near the line of defense, filled it with, and piled thereon and about it, stones, rocks, and sand of great weight. It was discovered later that the weight thus put upon it greatly damaged the hull, and, upon complaint of the agent of the claimant, the stones, sand bags, etc., were removed by the Venezuelan authorities. Memorialist asserts that said hull was rendered useless and that without it the boiler is a complete loss, and he asks an award in the sum of $4,002.25.

The evidence of various parties cognizant of the facts is presented showing the condition of the hull prior to its being used in the manner and for the purpose above described and the injury sustained, the witnesses stating that the hull was rendered useless for the purpose for which it was intended, and that the repairs will cost as much as to build a new one.

The same principle is applicable here as in the foregoing item. The right of the State, under the stress of necessity, to appropriate private property for public use is unquestioned, but always with the corresponding obligation to make just compensation to the owner thereof. It is believed, however, from all the evidence here presented, that the sum of $2,000, with interest thereon at 3 per cent per annum from July 15, 1902, to December 31, 1903, will fully compensate Mr. Upton for whatever loss or damage he has sustained on this item of his claim.

As to the remaining items of this claim it is evident from the claimant's own statement that the losses set forth in his memorial arose from the disturbed condition of the country, due to the civil war then existing in Venezuela, and not from any acts of the Venezuelan Government or its agents, specially directed against the claimant or his property. Under these circumstances the claimant's privileges and immunities were not different from those of other inhabitants of the country. He must be held, in going into a foreign country, to have voluntary assumed the risks as well as the advantages of his residence there. Neither claimant nor his property can be exempted from the evils incident to a state of war to which all other persons and property within the same territory were exposed. As to these items, therefore, the claim must be disallowed.

DEL GENOVESE CASE.

Award made in favor of claimant for back payments and for work done under contractual obligation, but no interest allowed on delayed payments because of written waiver of claimant.

PAÚL, *Commissioner* (for the Commission):

This claim is based on a breach of a contract entered into by Virgilio del Genovese, the claimant herein, and the Government of Venezuela,

through its department of public works, on the 26th day of January, 1897, for the extension of West Ninth street, in this city.

The various items of the claim are as follows:

		Bolivars.
First. Balance due, under contract, on account of sections first and second, completed and accepted, as per statement of director of the bureau of roads, etc., April 11, 1903		158,704.05
Second. Extra stonework and filling on sections first and second made necessary by increased length of culverts		32,370.53
Third. For work done to date of this claim (June 29, 1903) on section 3, which has not been fully completed because of failure on the part of the Government of Venezuela to make payments for completed works, as agreed, as follows:		
Total amount agreed to be paid on account of said section, as per article 3 of the contract	203,358.51	
Less amount necessary to complete unfinished portion of the work	4,000.00	
		199,358.51
Fourth. Damages for delays due to arbitrary stoppages of the work by Venezuelan authorities (1,049 days, at 250 bolivars per day)		262,250.00
Fifth. Damages for indignities suffered and loss of mules, etc., March 2, 1903		25,000.00
Sixth. Interest for payments in arrears at 6 per cent per annum, as follows:		
Section 1. Balance due under contract, but not including extra work, 73,074.05 bolivars, from March 28, 1898, to date, in round numbers	21,600	
Section 2. Balance due under contract, not including extra work, 86,630 bolivars, due since June 19, 1900, 3 years, in round numbers	15,593	
Sections 1 and 2. Extra work done and accepted by Government, amounting to 32,370.53 bolivars	5,826	
		43,019.00
Grand total		720,702.09

From the examination of the documents joined to this claim and by the papers mentioned by the department of public works in its report referred to by the honorable agent for Venezuela in his reply, made before this Commission, the following facts appear proved:

That the Government of Venezuela on January 26, 1897, through the department of public works, made a contract with Mr. Virgilio del Genovese, for the extension of West Ninth street of this city. By article 2 of said contract del Genovese bound himself to begin the work on the construction of the culvert of the stream "Las Tinajetas" and its filling; that upon completion of this work he was to begin the construction of the culvert of the stream "El Tajamar" and its filling, and, this second part of the work completed, to begin that of the stream "Los Padrones" and its filling.

Article 3 of the same contract stipulated the total value of the work to be executed by del Genovese in the sum of 423,492.62 Bolivars, distributed in the following way:

	Bolivars.
First section	133,494.05
Second section	86,630.00
Third section	203,358.57

Article 5 stipulated that on the completion of each section the contractor should notify the department of public works so as to obtain the acceptance; that the payment of each one of the sections was to be made by weekly installments, to begin when the completed section had been received by said department, the office of which should

determine the amount of each weekly installment. The progress of the work was to be regulated by the department of public works in such manner that the second section was to be constructed at the same time the payments for the first were being made, and the third section during the payments of the second, but the payment for no section should have begun until the preceding had been liquidated; the payment for the third section to be made in a period proportionate to that of the two former, in relation to their respective estimates.

Article 8 stipulated that the work was to be inspected by an engineer appointed by the department of public works, and no trenches for foundations were to be filled in without the order of said employee.

Article 9 provided that the Government reserved to itself the right to modify the plans and other conditions of the work, and the differences which such modification could have produced in relation to the estimate should be calculated at the prices established in the sheet of conditions.

By article 10 the Government of Venezuela allowed Mr. del Genovese the importation free of custom duties of the machines and tools required for the construction of the work, and also granted to him the exoneration of one-half of the dues of the breakwater pier at La Guaira, and one-half of the freight on the La Guaira and Caracas Railway for the said machinery and tools, and for the cement to be used in said work.

From the information asked by the director of the section of roads and aqueducts of the department of public works on the 11th of April of this year it appears that the Government of Venezuela owes to Virgilio del Genovese the sum of 158,704.5 bolivars, balance of the price of the work executed for the extension of West Ninth street of this city, with specification of the price of the sections completed and delivered, according to the contract, and of the sums received by del Genovese on account of section first, as per the orders of payment issued in his favor by the department of public works on the national treasury, and personal payments made to del Genovese by the said department.

Mr. del Genovese found correct the liquidation made by the department of public works of the balance due him for the price of the two sections, first and second, completed and delivered. On August 6, 1900, Mr. del Genovese addressed to the secretary of public works a note, a copy of which has been presented, in the following terms:

CARACAS, *August 6, 1900.*

Citizen Minister of Public Works:

I have the honor to address myself to you in order to advise you that, having completed, since the 19th of June of the current year, the work of the second section, according to the provisions of the contract which I celebrated with the Government of the Republic, I complied with the duty of communicating same to that department, begging that it should proceed, as was natural and just, to accept the work, but up to date this has not been done in spite of all my exertions, verbally and in writing to that end.

As it is now forty-eight days since said work was completed, without its having been accepted officially, which causes me serious material damages and moral uneasiness, I find myself in the indispensable and unavoidable position of requesting once more than you will be pleased to order whatever may be necessary for the official delivery of said work at the earliest possible moment.

I take the liberty of submitting to you, that if the consideration that, in accordance with the provisions of the contract, the value of the first section should be paid to me on the delivery of the second, this consideration ought no longer to delay the said acceptance, because my previous conduct may serve you as a guaranty that I

shall know how to appreciate the difficult situation of the Government, and that I shall lend myself gladly to a just and equitable arrangement for the purposes of said payment, since my greatest desire is to begin the work on the third section in order to comply with what I have bound myself in said contract, and that the honor may be mine that this Government, which has given so many proofs of honesty, of progressive spirit, and of the desire to protect the honest and industrious people, and for which I have so much sympathy, may continue satisfied with me.

It is not beside the point to indicate to you that, according to the weekly reports which I have furnished to your department, I have given work daily to some forty laborers who are waiting for me to begin the third section in order to once more have an occupation and bread for themselves and their families.

Confident that all which I have submitted will determine your department to accede to my just request, believe me,

Your obedient servant, VIRGILIO DEL GENOVESE.

It can be seen, by the terms of this letter, the contractor considered in accordance with the contract an obstacle for the acceptance of the second section of the work by the department of public works, the fact of the first section not having been paid for, and by his own request the said department consented, as it appears from the documents presented, to receive said second section, continuing the periodical payments to del Genovese during the remainder of 1900, 1901, and 1902, to the amount of 21,600 bolivars for the first section, as shown by the liquidated account.

It has not been proved that there had been a breach of contract on the part of Venezuela, as the delay in the payment of the weekly installments that should have been made to del Genovese for the price of the two sections completed and delivered, were tolerated by him, and as it has already been stated, he said to the Government that the delay should not be a cause to stop the acceptance of the second section of the work, his past conduct being a guarantee that he knew how to appreciate the economical difficulties of the Government, and that he would gladly accept a just and equitable arrangement for the payment of said delayed installments.

The circumstance that the contractor again addressed the Government of Venezuela a letter dated March 20 of the current year, acknowledging that the work on the third section had been suspended for two years on account of the political state of the country, and that he was ready to resume said work, evidently proves that he was willing to suspend said work without being justified to make the Government of Venezuela responsible for a breach of contract which he now pretends to establish.

Regarding the balance due to Virgilio del Genovese by the Venezuelan Government, for the price of the first section and the whole price of the second section, amounting to the sum of 158,704.05 bolivars, it appears as shown in an account furnished to Mr. del Genovese under date of April 11, 1903, by the director of the bureau of roads, etc., in the department of public works, that the Government of Venezuela admitted to be due to the claimant, the said sum of 158,704.05 bolivars to that date.

From the evidence presented by the memorialist, it is proven that some extra work in the sum of 32,370.53 bolivars, specified in the affidavit sworn to by the civil engineer, J. Luch, executed by the contractor at the unit price specified in the sheet of conditions, really amounts to that sum and must be allowed.

From the documentary evidence presented by the claimant and also from the other documents recorded in the department of public works,

which has been put at the disposal of this Commission for its examination, it is apparent that said department of public works was informed by del Genovese several times that he had prosecuted the work in its third section and, especially in his note of March 16, 1903, he informed the secretary of public works that on that date the work on the third section had been resumed. There exists in the record some orders from the secretary of public works, authorizing del Genovese to introduce free of duties a number of barrels of cement to be employed in the execution of the third section of the extension of West Ninth street. The memorialist admits that some work remains yet to be done for the conclusion of the third section, which he estimates, in conformity with the opinion of two contractors of public work, named José Rodriguez and Daniel Martinez Poleo, could be done for the sum of 4,000 bolivars.

This Commission, desiring to obtain all the necessary information about the value of the work that remained to be done for the completion of the third section, asked and obtained the learned opinion of Dr. Carlos Monagas, a Venezuelan engineer. After having taken in consideration that opinion, and the careful examination of all the evidence presented by both parties, the Commission arrives at the conclusion that the sum of 30,000 bolivars must be deducted from the amount of 203,358.51 bolivars to be paid for said third section, as per article 3 of the contract.

The damages claimed for the stoppages of the work amounting to the sum of 262,250 bolivars, and the interest at 6 per cent per annum on the balance due for the price of the first and second sections which the claimant puts forth for 43,019 bolivars, must be disallowed, because the stoppage of the work has not been caused by arbitrary action of the Government of Venezuela, but by the natural consequences of the civil war, which were admitted by the same contractor as justified, as it appears from his correspondence with the department of public works.

The damages for indignities suffered and for loss of mules, etc., on March 2, 1903, amounting to 25,000 bolivars, can not be taken into consideration, as the fact on which this part of the claim is founded appears to consist in an act of highway robbery that can not affect the responsibility of the Government of Venezuela.

For the aforesaid reasons an award is made in favor of Mr. Virgilio del Genovese for the sum of $70,083.28 United States gold, without interest.

La Guaira Electric Light and Power Co. Case.

Claim for breach of contract by municipal corporation disallowed as against General Government because of dual entity of public corporation. It acquires property and makes contracts therefor as an individual, and the National Government can not therefore be held accountable.

Bainbridge, *Commissioner* (for the Commission):

It appears from the evidence that on October 19, 1893, the municipal council of La Guaira, in ordinary session, approved a contract granting to one Luis J. García the privilege of establishing an electric-light plant in that city. The contract was executed on behalf of the

city by "Rafael Ravard, chairman of the municipal council of the district of Vargas, sufficiently empowered by this corporation," and by Luis J. García, "a resident of this city," on the other part.

On October 11, 1895, Luis J. García transferred to his brothers, Juan B. and Antonio García, all the rights and privileges possessed by the former under the contract. Juan B. García and others incorporated the claimant company under the laws of the State of West Virginia on October 17, 1895.

By the fourth article of the contract of 1893, it was provided that the work to establish the plant was to begin within six months and to be finished within ten months. The twelfth article provided that the contract was to run twenty-five years and the municipality bound itself not to grant to anyone for the district of Vargas equal or better rights for the public lighting or to make any contract relating to any illumination.

In April, 1894, Luis J. García was granted an extension of six months to begin the work of installing the plant; again, in March, 1895, another extension of four months was granted him by the municipal council, and still another extension of six months on June 8, 1895.

The minutes of the municipal council of La Guaira, under date of December 27, 1897, show an entry to the effect that all efforts of that body and of the mayor have been useless to obtain the fulfillment of the contract made with Luis J. García. On December 31, 1897, the municipal council approved a contract with F. Martinez Espino & Co., of Caracas, for the establishment of electric lighting.

On January 23, 1900, in the court of first instance at Petare, in a certain action entered by the La Guaira Electric Light and Power Company against the municipal council of the Vargas district, a settlement of said litigation was effected and made of record whereby F. Martinez Espino & Co. transferred to the La Guaira Electric Light and Power Company all the rights and privileges of the contract executed December 31, 1897, with the council of the Vargas district, and as a compensation for this transfer the La Guaira Electric Light and Power Company recognized the right of Espino & Co. to receive 5 per cent of the shares issued by the cessionary company; and by the fourth article of the settlement the municipal council of the Vargas district and J. B. García, as attorney for the La Guaira Electric Light and Power Company, "agreed to rescind the contract which with the same purpose was executed under date of October 19, 1893, between the said municipal council and Luis J. García, remaining only in force the one caused by this cession." In November, 1897, the municipality had brought suit in the court at Petare for the cancellation of the contract of October 19, 1893. And as indicating the scope of the settlement effected on January 23, 1900, the following is quoted from the judicial record:

> This tribunal gives its approval to this transaction (i. e., the settlement), interposing for its greatest force its authority and judicial decree; and resolves, according to the request, to make appear in the file that the action entered by the municipal council of the Vargas district against the La Guaira Electric Light and Power Company for the abrogation of a contract about electric light, that this settlement has been entered into.

The fifth article of the contract with Espino & Co., referred to in the settlement as being the only one thereafter remaining in force, reads as follows:

> The work for installation of the company must be started six months from date of this contract (i. e., December 31, 1897) and ended six months after started. This time could be extended for cause of superior force. The failure to comply within the time stipulated will make this contract abrogated.

However, it was agreed in the settlement effected in court on January 23, 1900, that—

> as a natural result of this transaction the parties hereto have agreed that the time stipulated in the contract transferred will begin to count from this date.

At an extra session of the municipal council of the department of Vargas, held on January 24, 1901, a resolution was passed that the contract with the La Guaira Electric Light and Power Company had ceased de facto, according to the fifth article thereof.

On February 25, 1901, the municipal council of La Guaira ratified a contract for electric lighting, executed on December 12, 1899, with Messrs. Perez and Morales.

On March 6, 1901, J. B. García, as attorney for the La Guaira Electric Light and Power Company, protested against the action of the municipal council in canceling the contract of which said company was cessionary, as per the judicial settlement of January 23, 1900, and against the refusal of the council to grant the extensions requested for beginning the work, and claiming that the state of civil war and latterly the earthquake of October 29, 1900, had prevented compliance with the contract and rendered necessary the extensions of time asked. He insisted in the protest that, supposing the company were in fault, the council "could only have an action to ask for the abrogation of the contract before the courts of justice, as the contract is mutual."

Substantially upon the foregoing facts a claim is presented here on behalf of the La Guaira Electric Light and Power Company against the Republic of Venezuela for the sum of $1,500,000. But the memorialist states:

> The company is willing, however, on condition that the Republic of Venezuela and the municipalities concerned act in a friendly spirit, paying damages sustained through actual destruction of property, and regranting its charter so that its rights may be extended for a period to compensate for the interruption and destruction of its business, that then the loss of profits specified shall be waived and the sum of $150,000 for actual loss of property in that event received.

The memorial is couched in somewhat vague and indefinite terms. Various interruptions of the company's service are alleged and certain unpaid indebtedness from the municipality to the company is set forth. An alleged arrest of all the employees of the company on one occasion and their detention "in the calaboose" over night is charged, and it appears that J. B. García was arrested on April 4, 1898, and confined for a period of twenty-four days, the only excuse for his confinement being that he was a political suspect. Since February 23, 1899, said García has been a citizen of the United States. As nearly as can be ascertained from all the evidence presented the injuries to property complained of occurred during the years 1897, 1898, and 1899, prior, it is to be observed, to the settlement of differences between the company and the municipality effected and made of record in the court of first instance at Petare on the 23d of January, 1900.

The contract of the claimant company then in force was declared null and void de facto "according to the fifth article thereof" by the municipal council on January 24, 1901.

The protest of the company made on March 6, 1901, was against the refusal of the council to grant extensions requested for beginning and executing the work as provided by that article. It is not claimed that the contract had been complied with, but that the state of civil war and the earthquake of October 29, 1900, had prevented compliance and rendered necessary the extensions asked. The protest seeks to "reserve all the rights of the company about the matter, to make them valuable before the tribunals of the Republic against the said municipal council."

Except as hereinafter stated, the Government of Venezuela does not appear in any contract or proceeding relating to this company. The parties to the various contracts and judicial proceedings were the municipal council of the district of Vargas and the claimant. But it is sought here to hold the National Government liable for the acts of the municipality as one of the political subdivisions of the State. No evidence is introduced to fix such liability by reason of special legislative or administrative control exercised by the National Government over the municipality. The learned counsel for the United States argues that by the protocol constituting this Commission all citizens of the United States who possessed claims were given the right of recourse against the entity which entered into this international agreement, and that under this agreement the various political subdivisions of the Government of Venezuela were included; and further, that there is in this case no remedy but against the Federal Government, which by signing the protocol has obligated itself to redress the wrongful acts of municipalities as well as other constituted parts of its power.

The argument, however, overlooks the dual character of municipal corporations; the one governmental, legislative, or public; the other proprietary or private.

> In their public capacity a responsibility exists in the performance of acts for the public benefit, and in this respect they are merely a part of the machinery of government of the sovereignty creating them, and the authority of the State is supreme.
>
> But in their proprietary or private character their powers are supposed to be conferred, not from considerations of state, but for the private advantage of the particular corporation as a distinct legal personality. (Bouvier Law Dict., Rawle's ed., Vol. II, 453.)

Those matters which are of concern to the State at large, although exercised within defined limits, such as the administration of justice, the preservation of the public peace, and the like, are held to be under legislative control, while the enforcement of municipal by-laws proper, the establishment of gas works, waterworks, construction of sewers, and the like, are matters which pertain to the municipality as distinguished from the State at large. (Ibid.)

The contract between the municipal council and the claimant company for the establishment of the electric-light plant was entered into by the former solely in the exercise of its proprietary functions as a distinct legal personality. Its act was in nowise connected with its governmental or public functions as a political subdivision of the State. So far as the contract is concerned, the municipality is to be regarded as neither more nor less than a private corporation, and as such could sue or be sued in respect thereof. (Dillon's Mun. Corp., sec. 66.)

It is fundamental that citizens or subjects of one country who go to a foreign country and enter into contracts with its citizens are presumed to make their engagements in accordance with and subject to the laws of the country where the obligations imposed by the contract are to be fulfilled, and are ordinarily remitted to the remedies afforded by those laws for the redress of grievances resulting from breaches or nonfulfillment of such contracts.

It is only when those laws are not fairly administered, or when they provide no remedy for wrongs, or when they are such as might happen in very exceptional cases as to constitute grievous oppression in themselves, that the State to which the individual belongs has the right to interfere in his behalf. (Hall, Int. Law, p. 291, sec. 87.)

In order to bring this claim within the jurisdiction of the Commission, it was, in our judgment, incumbent upon the claimant to show a sufficient excuse for not having made an appeal to the courts of Venezuela open to it, or a discrimination or denial of justice after such appeal had been made. As the claim stands it is merely a dispute between a citizen of the United States and a citizen of Venezuela in regard to their respective rights under the terms of a certain contract. It has not the necessary basis for an international reclamation. The case is very different from one in which the Government itself has violated a contract to which it is a party. In such a case the jurisdiction of the Commission under the terms of the protocol is beyond question. All that is decided here is that the Commission has no jurisdiction of the claim of the La Guaira Electric Light and Power Company in its present status, and the said claim, except as hereinafter stated, is hereby dismissed on that ground without prejudice to the rights of either the claimant company or the municipality concerned.

But it appears in evidence that on July 7, 1894, the National Government made a contract with Luis J. García "for himself and for the company which he may organize" by which the said García or his company agreed to provide electric light for the custom-house and other public buildings at La Guaira, the Government agreeing to pay to García or to the company for such service the sum of 2,000 bolivars monthly. The claimant herein alleges that there is due from the National Government according to this contract for services rendered from July 1 to December 1, 1897, the sum of $2,307.69. This indebtedness is not denied by the Government of Venezuela, and an award is therefore made for said sum with interest thereon at 3 per cent per annum from December 1, 1897, to December 31, 1903, the anticipated date of the final award by this Commission.

RUDLOFF CASE.

INTERLOCUTORY DECISION.

(By the Umpire:)

The protocol requiring that claims shall be considered upon the basis of absolute equity, the Commission in doing equity has the right to examine and determine whether the provision of a contract requiring all disputes to be submitted to the local courts is equitable under the circumstances, and, in this case, the contract provision being found to work inequitably, jurisdiction of the claim is entertained.

DECISION ON MERITS.

(By the Commission:)

A contract entered into by the minister of public works of the nation and the governor of the Federal District duly authorized by the Chief Executive of the nation, is to be considered as a contract made by the National Government, especially where the National Government entered into an agreement as to free entry of materials for the fulfillment of the contract.

Consequential damages disallowed.

Award made for value of property arbitrarily destroyed.

No sufficient evidence as to value of concession having been submitted, claim for loss on this ground disallowed.

BAINBRIDGE, *Commissioner* (claim referred to umpire on preliminary question of jurisdiction:)

The Government of Venezuela demurs to the jurisdiction of the Commission in respect to the above-entitled claim, and bases its demurrer on the following grounds:

First. That on May 6, 1901, Sofia Ida Wiskow Rudloff and Frederick W. Rudloff sued the nation before the Federal court in order to compel it to pay them, in their capacities as heirs of Henry J. Rudloff, the sum of 3,698,801 bolivars for damages originating in an alleged breach of the contract entered into between their predecessor in interest, the said Henry J. Rudloff and the Government of Venezuela, for the construction of a market building in Caracas. It is argued that as the claimants sought the jurisdiction of the tribunals of Venezuela to submit to them their claim, a voluntary and deliberate act on their part, they have submitted themselves to the provisions of local legislation, both substantive and adjective, in all and everything that might pertain to the suit; that the Federal court has assumed jurisdiction over and decided the claim; that the parties have both appealed from the decision of the court and the court of appeals has taken cognizance of the matter, that article 216 of the Code of Civil Procedure in force provides: "If the discontinuation is limited to the proceeding, it can not be had without the consent of the opposite party," and that the defendant Government not having given its consent for the discontinuance in the manner in which the claimants have done so, the claimants can not withdraw the claim from the jurisdiction from the Federal court in order to submit it to the Commission.

Second. That article 12 of the aforesaid contract provides that:

> The doubts and controversies that may arise on account of this contract shall be decided by the competent tribunals of the Republic in conformity with the laws and shall not give reason for any international reclamations,

and that the case of a denial of justice can not be alleged because the court of first instance has decided the case favorably to the claimants, and the jurisdiction of the tribunals of the Republic has not been exhausted in the litigation.

These two grounds of demurrer will be considered here in the order stated, but it is to be remarked at the outset that the Commission as a court of last resort is the sole and conclusive judge of its own jurisdiction. Mr. Webster, then Secretary of State, said, in relation to the United States and Mexican Commission of 1839, that it was

> essentially a judicial tribunal with independent attributes and powers in regard to its peculiar functions,

and that

> its right and duty, therefore, like those of other judicial bodies, are to determine

upon the nature and extent of its own jurisdiction, as well as to consider and decide upon the merits of the claims which might be laid before it.[a]

The determination by the Commission of the objections to its jurisdiction raised by the Government of Venezuela, as above set forth, is clearly within the scope of its delegated authority.

In determining the first objection, certain material facts must be borne in mind. On the 6th of May, 1901, the claimants brought suit in the chamber of first instance of the Federal court against the Government of Venezuela. The suit proceeded to trial and judgment which was entered on the 14th of February, 1903. On February 16, 1903, the attorney-general, on behalf of the Government, appealed from the judgment, and on the same day the claimants appealed from it. The case thus remains pending in the courts.

The parties to an action pending in court may always by agreement submit the whole or any part of the matter or matters in issue to arbitration. Indeed, the submission to arbitration, in the absence of collusion or fraud, is favored by courts upon broad grounds of public policy. This principle of arbitration enters into and forms a part of every civilized code of jurisprudence, and to this rule the jurisprudence of Venezuela is no exception. Article 493 of the Venezuelan Code of Civil Procedure provides:

> In any condition of the case in which the parties may signify a wish to have it submitted to arbitrators, the course of proceeding shall be suspended and the case immediately passed over to those named.

The rule above stated is the same, so far as it touches the question here, where the arbitration is between nations and the submission concerns a private claim. Only the Government of the claimant, acting in his behalf, enters into the agreement for arbitration.

In this case the parties to the action pending in the local tribunals are on the one hand the claimants, citizens of the United States as plaintiffs, and the Government of Venezuela on the other as defendant. Have these parties litigant agreed to submit the cause to the arbitration of this international tribunal? If they have, the agreement is binding upon both.

The appeal was taken by both parties from the judgment of the lower court on February 16, 1903. On the following day the Government of Venezuela signed the protocol constituting this Commission, and by that act agreed to submit to the arbitrament of this tribunal:

> All claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments.

Nothing could be clearer than the language thus employed to define the scope of the jurisdiction conferred, or than that the jurisdiction conferred is inclusive of such a claim as this one of the Rudloff heirs against the Venezuelan Government. The signing of the convention by the two Governments was in the solemn exercise of the highest prerogative of sovereignty, and it is the duty of the Commission to so interpret the terms of the convention, and, under its oath, so to act as to give effect to the intention, thus unequivocally expressed, of the high contracting parties.

Vattel, speaking of the interpretation of treaties, says:

> The interpretation which renders a treaty null and without effect can not be admitted. It ought to be interpreted in such a manner as it may have its effect, and not to be found vain and nugatory. (Vattel, book 2, ch. 17, sec. 283.)

---

[a] Moore's Arbitrations, 1242; Senate Ex. Doc. 320, 27th Cong., 2d sess., 185.

The claim presented here is a claim owned by citizens of the United States of America against the Republic of Venezuela. It has not been settled by diplomatic agreement or by arbitration. The Government of Venezuela has in the most solemn manner agreed to submit such claims to the jurisdiction of this Commission, under the plain terms of the convention of February 17, 1903. The claimants, availing themselves of the action of their Government in their behalf, agree to submit their claim to the jurisdiction of this Commission by its presentation here.

The identical objection to the jurisdiction was urged in the case of Selwyn *v.* Venezuela before the British and Venezuelan Claims Commission now in session at this capital. In sustaining the jurisdiction of the Commission, Plumley, umpire, said:

> International arbitration is not affected jurisdictionally by the fact that the same question is in the courts of one of the nations. Such international tribunal has power to act without reference thereto, and if judgment has been pronounced by such court to disregard the same, so far as it affects the indemnity to the individual, and has power to make an award in addition thereto or in aid thereof, as in the given case justice may require. Within the limits prescribed by the convention constituting it, the parties have created a tribunal superior to the local courts.[a]

In fact the law which governs this Commission, and which it must apply in the exercise of its functions, is not the municipal law of either of the contracting nations, but it is that paramount code which is obligatory upon both.

Says Hall (4th Ed., p. 1):[b]

> International law consists in certain rules of conduct which modern civilized states regard as being binding on them in their relations with one another with a force comparable in nature and degree to that binding the conscientious person to obey the laws of his country, and which they also regard as being enforceable by appropriate means in case of infringement.

These rules of conduct recognize the right and duty of a state to protect its citizens or subjects at home or abroad, and the corresponding obligation of a state to make due reparation and give just compensation for injuries inflicted upon another state, or upon its citizens or subjects. And whenever two independent nations have by solemn compact provided a forum to determine the extent of the injuries inflicted by the one upon the other, and the means of redress therefor, the legislation of neither of the contracting parties can interpose to limit or defeat the jurisdiction of that forum in respect of any matter fairly within the purview of the compact. The two Governments have for the purposes expressed created a tribunal superior to the local courts—

> an independent judicial tribunal possessed of all the powers and endowed with all the properties which should distinguish a court of high international jurisdiction, alike competent, in the jurisdiction conferred upon it, to bring under judgment the decisions of the local courts of both nations, and beyond the competence of either Government to interfere with, direct, or obstruct its deliberations. (Moore, 2599.)

The second objection to the jurisdiction of the Commission raised by the Government of Venezuela is based upon article 12 of the contract, which reads as follows:

> The doubts or controversies that may arise on account of this contract shall be decided by the competent courts of the Republic, in conformity with the laws, and shall not give reason for any international reclamation.

---

[a] See p. 323; see also Martini case, p. 819. [b] See p. 555.

The memorial states that, pursuant to an order of the national Executive, the governor of the Federal district placed the contract in question before the municipal council, who, on September 8, 1903, by a decree, declared it null, and authorized the governor to take possession of the market and demolish the work done by Rudloff, and that this decree was carried out by the public functionaries, notwithstanding the protests of Mr. Rudloff. For the purpose of this preliminary inquiry as to jurisdiction, the statements in the memorial are to be considered as true, the sole question for the present being whether, if true, this Commission can take cognizance of the claim.

In regard to that portion of article 12 of the contract inhibiting international reclamation, it is perfectly obvious that under established principles of the law of nations such a clause is wholly invalid. A contract between a sovereign and a citizen of a foreign country not to make matters of differences or disputes arising out of an agreement between them or out of anything else the subject of an international claim, is not consonant with sound public policy and is not within their competence. In the case of Flanagan, Bradley, Clark & Co. *v.* Venezuela, before the United States and Venezuelan Commission of 1890, Mr. Commissioner Little said:

> It (i.e., such a contract) would involve, pro tanto, a modification or suspension of the public law, and enable the sovereign in that instance to disregard his duty toward the citizen's own government. If a state may do so in a single instance, it may in all cases. By this means it could easily avoid a most important part of its international obligations. It would only have to provide by law that all contracts made within its jurisdiction should be subject to such inhibitory condition. For such a law, if valid, would form the part of every contract therein made as fully as if expressed in terms upon its face. Thus, we should have the spectacle of a state modifying the international law relative to itself. The statement of the proposition is its own refutation. The consent of the foreign citizens concerned can, in my belief, make no difference—confer no such authority. Such language as is employed in article 20, contemplates the potential doing of that by the sovereign toward the foreign citizen for which an international reclamation may rightfully be made under ordinary circumstances. Whenever that situation arises—that is, whenever a wrong occurs of such a character as to justify diplomatic interference—the government of the citizen at once becomes a party concerned. Its rights and obligations in the premises can not be affected by any precedent agreement to which it is not a party. Its obligation to protect its own citizen is inalienable. [a]

The contingency suggested by Commissioner Little appears to have happened in the case of Venezuela, since article 139 of the constitution of 1901 provides that the inhibitory condition against international reclamation shall be considered as incorporated, whether expressed or not, in every contract relating to public interest, and essentially the same provision was embodied in article 149 of the constitution of 1893. These constitutional provisions and legislative enactments of like nature are, however, clearly in contravention of the law of nations; they are pro tanto modifications or suspensions of the public law, and beyond the competence of any single power. For every member of the great family of nations must respect in others the right with which it is itself invested. And the right of a State to intervene for the protection of its citizens whenever by the public law a proper case arises can not be limited or denied by the legislation of another nation. Mr. Justice Story says:

> The laws of no nation can justly extend beyond its own territories, except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction. And however general and compre-

[a] Opinions of Commission of 1889–90, p. 451; Moore's Arbitrations, p. 3566.

hensive the phrases used in our municipal laws may be, they must always be restricted in construction to places and persons upon whom the legislature have authority and jurisdiction. (The *Apollon*, 9 Wheaton, 362.)

The subject of international reclamation is by its very terms outside the legislative jurisdiction of any one nation. And it is, furthermore, an utter fallacy to assert that this principle is an encroachment upon national sovereignty. That nation is most truly sovereign and independent which most scrupulously respects the independence and sovereignty of other powers.

Neither is it within the power of a citizen to make a contract limiting in any manner the exercise by his own government of its rights or the performance of its duties. A state possesses the right and owes the duty of protection to its citizens at home and abroad. The exercise of this right and the performance of this duty are as important to the state itself as the protection afforded may be to the individual. The observance of its obligation is fundamental and vital to every government. An injury to one of its citizens is an injury to the state, which punishes for infraction of municipal law and demands redress for violation of public law upon broad grounds of public policy. The individual citizen is not competent by any agreement he may make to bind the state to overlook an injury to itself arising through him, nor can he by his own act alienate the obligations of the state toward himself except by a transfer of his allegiance.[a]

There remains to be considered that portion of article 12 of the contract which provides that—

the doubts and controversies that may arise on account of this contract shall be decided by the competent courts of the Republic in conformity with the laws.

Assuming, for the purposes of the examination, but in no wise admitting, that this portion of the article refers to such a case as is presented here, it must be apparent that the obligations of the article bore equally and reciprocally upon both parties to the contract—upon the Government of Venezuela as well as upon the claimants—and that when the Government, without resort to the tribunals of the Republic, declared the contract null, the claimants were absolved from all obligations, if any had theretofore existed in that behalf.

In the great case of the Delagoa Bay Company,[b] the Government of the United States said, in reply to a similar objection raised by Portugal, that it was not within the power of one of the parties to an agreement first to annul it and then to hold the other party to the observance of its conditions, as if it were a subsisting engagement. It is contrary to every principle of natural justice that one party to a contract may pass judgment upon the other, and this is no less true when the former is a government and the latter is a foreign citizen. Public law regards the parties to a contract as of equal dignity, equally entitled to the hearing and judgment of an impartial and disinterested tribunal.

The acts of a sovereign [says Mr. Wheaton, a very high authority], however binding on his own subjects, if they are not conformable to the public law of the world, can not be considered as binding on the subjects of other states. A wrong done to them forms an equally just ground of complaint on the part of their government, whether it proceed from the direct agency of the sovereign or is inflicted by the instrumentality of his tribunals. (Wharton's Int. Law Dig., sec. 242.)

It is undoubtedly true that citizens or subjects of one country who go to a foreign country and enter into contracts with its citizens are

[a] See also upon this point the Martini case, p. 841 (opinion of umpire).
[b] Moore's Arbitrations, p. 1865.

presumed to make their engagements in accordance with and subject to the laws of the country where the obligations of the contract are to be fulfilled, and ordinarily can have recourse to their own government for redress of grievances only in case of a denial of justice. But as was forcibly stated by Mr. Cass, Secretary of State of the United States:

> The case is widely different when the foreign government becomes itself a party to important contracts, and then not only fails to fulfill them but capriciously annuls them, to the great loss of those who have invested their time, and labor, and capital from a reliance upon its own good faith and justice.[a]

It is just such a "widely different case" that is presented here. It is just such a case that is within the terms of Article I of the protocol, defining the jurisdiction of this Commission. And in my judgment the Commission can not refuse to take cognizance of this claim without disregarding its solemn oath—

> carefully to examine and impartially decide according to justice and the provisions of said convention all claims submitted to it in conformity with its terms.

Prima facie, the memorial presents the case of a wrongful annulment, by the arbitrary act of the Venezuelan Government, of a contract to which it was a party, injuriously affecting the rights of the other party thereto, who was a citizen of the United States. Manifestly, the first part of article 12 of the contract relates solely to questions growing out of the agreement itself, and can not be construed to apply to a claim resulting from the capricious annulment of the agreement by one of the parties. Such a claim does not rest upon any doubts or controversies arising out of the contract, but is based upon the fact that the claimants have been deprived of valuable rights, moneys, property, and property rights by the wrongful act of the Government of Venezuela, which they were powerless to prevent and for which they claim compensation. The "doubts and controversies" referred to in article 12 obviously relate to questions affecting the interpretation of the contract, to questions whether it was being or had been complied with, and the like. As to such matters the parties, by that article, mutually agreed to have recourse to the local tribunals. But when the Government, on whatever grounds of policy, saw fit to abrogate the contract itself, and then to appropriate or to destroy the property or the property rights of the claimants, it must be held to have done so subject to the obligation to make full and adequate reparation and in full recognition of the right of the claimants, as citizens of the United States, to seek the intervention of their Government for their protection.

> The term "property" embraces every species of valuable right and interest, including real and personal property, easements, franchises, and hereditaments.
> Property is again divided into corporeal and incorporeal. The former comprehends such property as is perceptible to the senses, as lands, houses, goods, merchandise, and the like; the latter consists in legal rights, as choses in action, easements, and the like. (Bouvier's Law Dict., Rawle's ed., Vol. II, p. 781.)

The law of Venezuela recognizes that property rights may rest in contracts. Article 691 of the civil code provides:

> La propiedad y demás derechos se adquieren y transmiten por sucesión, por donación y por efecto de los contratos.

The taking away or destruction of rights acquired, transmitted, and defined by a contract is as much a wrong, entitling the sufferer to

---

[a] Wharton, International Law Dig., sec. 230, Vol. II, p. 615.

redress, as the taking away or destruction of tangible property; and such an act committed by a government against an alien resident gives, by established rules of international law, the government to which the alien owes allegiance and which in return owes him protection, the right to demand and to receive just compensation. Such an act constitutes the basis of a "claim" clearly within the meaning and intent of the convention constituting this Commission.

In addition to the foregoing it may be said the presence of article 12 in the Rudloff contract is obviously due to the constitutional and legislative provisions requiring it. The protocol, which is the fundamental law of this tribunal, however, provides that:

> The Commissioners, or, in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or the provisions of local legislation.

I am of the opinion that this claim is within the jurisdiction of this Commission, and that its careful examination and impartial decision constitute a solemn duty which the Commission can not with propriety either evade or ignore.

PAÚL, *Commissioner* (claim referred to umpire on preliminary question of jurisdiction):

The honorable agent for the United States presented to this Commission a memorial signed by Sofia Ida Wiskow de Rudloff and Frederick W. Rudloff, citizens of the United States, and heirs of Henry Frederick Rudloff, deceased, in which memorial said heirs claim from the Republic of Venezuela the payment of the sum of 3,698,801 bolivars, with interest, for the loss of capital and damages caused by the abrogation of certain contract made between said Henry Frederick Rudloff and the minister of public works and the mayor of the Federal district, published in the Official Gazette, No. 5717, of February 8, 1893, which contract had for its object the construction of a new market building in the San Jacinto square, this city.

The honorable agent for Venezuela, in his reply to the above-mentioned memorial, presented to this Commission, as a previous and special question to be decided, the exception against jurisdiction, based on the following reasons:

That on May 8, 1901, the same claimants, represented by Dr. Ascanio Negretti, sued the Venezuelan Government before the Federal court for the payment of the same amount and on the same basis that they now present to this Commission;

That the claimants having chosen the jurisdiction of the Federal court and submitted themselves to its decision, it is evident that they also accepted the dominion of the local legislation, substantive as well as adjective, in connection with the action brought by them against the Government of Venezuela, with the special circumstance that, by article 12 of the contract presented as evidence by the claimant, the contracting party agreed that—

> all doubts and disputes arising by reason of said contract should be decided by the tribunals of the Republic, and said disputes could never give reason for international reclamations.

That the hall of the first instance of the Federal court having taken cognizance of and decided the said action, and both parties having appealed from its decision, the same Federal court in its hall of the

second instance has this matter under its judicial notice at the present time; and Venezuela, that is to say, the defendant party, not having consented to the withdrawal of the suit from the jurisdiction of that high tribunal in order to have it submitted to this Commission, the latter consequently lacks jurisdiction; and, finally, that the case of denial of justice could not be alleged, since, not only has the court of the second instance not yet given a judgment that could cause definite execution in the case, but the decision rendered by the first instance of the Federal court was favorable to the claimants.

The question of jurisdiction in this case evidently is a matter of interpretation of the terms of the first article of the protocol dated February 17, 1903, signed at Washington by the Secretary of State of the United States of America and the plenipotentiary of Venezuela, that had for its object to submit to arbitration all the claims not settled, owned by citizens of the United States against the Republic of Venezuela.

The exact terms of said article are as follows:

> All claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the Commission hereinafter named, by the Department of State or its legation at Caracas, shall be examined and decided by a mixed commission which shall sit at Caracas, etc.

The general terms in which this article defines the jurisdiction of this tribunal are apt to be interpreted in such a way that the scope of the faculty intended to be given to the Commission comprised all claims owned by citizens of the United States against the Republic of Venezuela that had been the object of diplomatic correspondence between the two Governments without having reached a final settlement, or that were unknown to both Governments; but this amplitude of jurisdictional scope does not in any way interfere with the principles of common law and sound logic, which naturally exclude, because of nature and peculiar circumstances, certain questions or pretensions of those parties that consider themselves entitled to claim from the Republic of Venezuela from being presented, examined, or decided by this Commission. For instance, the above-mentioned article does categorically state that those questions or claims of citizens of the United States against the Republic of Venezuela that had already been submitted to the ordinary tribunals of the country and had been the object of definite executory judgment, and against which there has not been invoked as a basis for a new and different claim a denial of justice or evident injustice were excluded from the jurisdiction of this Commission, and notwithstanding that these claims could not be considered as settled by *diplomatic agreement or by arbitration between both Governments*, it is an indisputable fact that such questions or pretensions do not constitute a claim susceptible of submission to the examination and decision of this Commission.

In the meaning of the word "claim" it is indispensable to admit as a consubstantial element the idea of controversy between the Government of Venezuela and the claimant. That controversy, as in the present case, arises from a contract, and has been submitted for its definite decision to the jurisdiction of a tribunal of the Republic, which, according to the laws of the country and by the special articles of the same contract, has full jurisdiction to decide whether or not there exist responsibilities and obligations in favor of either party, and the stage

of the proceedings of the action in that case determine that it is not a claim of a Government against another Government to obtain satisfaction for a damage caused to the interests of one of its citizens, but it enters upon that condition of every question which is the object of a civil action in which concur all the elements and means accorded by the laws for the dilucidation and protection of the rights of both parties.

The Washington protocol could not have for its object the withdrawal from the decision of the tribunals of the Republic the judicial disputes that had been already submitted to them when it is natural to suppose that it had no other object than to facilitate, by means of the Mixed Commission, the definitive decision of those claims that had been already object of diplomatic dissension between the two Governments and about which a settlement had not been reached by agreement or arbitration. The act of making nugatory the laws of the Republic which are a part of its constitutional statute in regard to contracts and in regard to the jurisdiction of its tribunals, thus opposing the terms of the express contractual conditions that oblige the parties to submit all questions arising from said contract to the courts of the country without same ever becoming a cause for international claims, would have been a transgression on the legitimate powers with which the plenipotentiary of Venezuela was invested, which powers could never have made ineffectual the constitutional precepts established in the fundamental charter of 1901 that was in force at that date of the signing of the protocol. It is not then possible to admit an interpretation of the terms of said protocol that is not in perfect accordance with the fundamental basis of the national sovereignty exercised through its tribunals of justice, and in accordance with the universal principles that establish as supreme law to the parties in contracts and obligations, the judicial ties established by themselves in the exercise of their free will, and as a law to the contract.

It was in the exercise of this liberty, it was in the observance of the laws of the Republic that were known to Sofia I. W. de Rudloff and Frederick Henry Rudloff which laws they were obliged to comply with, as well as to the very special clause 12 of the said contract, on which they found their claim; and it was also in view thereof, that the Department of State of the United States of America, which under its constant rule of nonintervention in disputes arising from contracts between its citizens and foreign countries until after having availed themselves of all the remedies which the laws of such country afforded for the protection of their rights, instructed the claimants to make use of their right before the tribunals of Venezuela, and in accordance with those instructions said claimants presented to the Federal court their demand for damages against the Government of Venezuela. While this action exists, and while all the remedies afforded by our laws in their various instances are not exhausted, and while there is not used as a basis of a claim the fact of denial of justice or evident injustice in the judicial proceedings and in the final judgment of the Federal court, there does not exist any claim with reference to this matter that could be a subject for examination by this Commission.

It is true that the parties have the right, by article 216 of the code of civil proceedings, to desist from any action brought before a tribunal. The same article establishes that such desistance can not take place without the consent of the other party; and article 492 of the

same code, quoted by the honorable agent for the United States in his reply, stipulates that when at any stage of the case the parties manifest that they have submitted themselves to the decision of umpires, the course of the action be suspended and the pleadings and proceedings be immediately delivered to the umpires, it reveals by its own terms that such a statement should be made explicit, and by both parties, before the tribunal where the action was pending, and by no means could such a manifestation be deduced from the more or less exact interpretation of the terms of the protocol. When the protocol was signed at Washington the said action was pending before the Federal court, and had it been the intention of the Government of Venezuela, notwithstanding the conditions stated in the constitution of the Republic, and the clause of the contract which is the cause of the demand, and the natural jurisdiction of a high court of the Republic in the action brought by the same plaintiffs, such an exception would have to have been the object of an especial statement in the terms of the protocol, as happened in the Venezuelan-Mexican protocol signed by the same plenipotentiary of Venezuela, Mr. Bowen, on the 26th day of the same month of February.

Said Venezuelan-Mexican protocol expressly states:

> It is understood that if before the 1st of June, 1903, the claims of Mexico above mentioned are settled by agreement between the claimants and the Government of Venezuela, or decided in favor of said claimants by the court of Venezuela, said claims shall not be submitted to the arbitration agreed upon in the preceding articles.[a]

This exception was caused by the circumstances that the representatives of the high contracting parties knew of the existence of the demand entered in action by the firm of Martinez del Río & Bros. before the high Federal court, and both representatives thought it indispensable to specify a date and a condition that would contribute to fixing the jurisdiction of the Mixed Commission in the special case of the above-mentioned claim, it being in limine litis submitted for its decision to a court that fully exercised that jurisdiction, and which the parties could not avoid without a special, express, and definite declaration.

For the above-stated reasons, it is my opinion that while there exists a demand in action brought by the same claimant before the Federal court for the same object mentioned in the memorial presented to this Commission, which judgment is still pending by reason of an appeal made by both parties to the hall of the second instance of the same court from the decision pronounced by the hall of the first instance, there does not properly exist a claim against the Government of Venezuela which could be submitted to the jurisdiction of this Commission by the Rudloff heirs, and consequently this Commission has absolutely no jurisdiction and ought to reject the pretension of the applicants.

INTERLOCUTORY DECISION OF THE UMPIRE ON JURISDICTION.

BARGE, *Umpire.*

A difference of opinion having arisen between the Commissioners of the United States of North America and of the United States of Venezuela about the question of jurisdiction in this case, this question was duly referred to the umpire for an interlocutory decision.

The umpire having fully taken into consideration the protocol, and also the opinions and arguments of the Commissioners, as well as the

---

[a] Page 876.

documents, evidence, and arguments, and likewise all the communications made by the two parties, and having impartially and carefully examined the same, has arrived at the following decision:

Whereas the protocol, whereupon solely and wholly rests the jurisdiction of this Commission, says that all claims owned by citizens of the United States of North America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to this Commission by the Department of State of the United States or its legation at Caracas shall be examined and decided by this Commission; and

Whereas claimants in the first place are citizens of the United States, and, secondly, own a claim against the Republic of Venezuela, which claim has not been settled by diplomatic agreement or by arbitration between the two Governments, whilst in the third place it has been duly presented to this Commission by the Department of State of the United States through its agent,.

This claim certainly prima facie shows itself as standing under the jurisdiction of this Commission.

Now, whereas the Government of Venezuela, by its honorable agent, opposes that in article 12 of the contract entered into by the predecessor in interest of the claimants, the parties stipulated that the doubts and controversies which might arise by reason of it should be decided by the tribunals of the Republic, it has to be considered that this stipulation by itself does not withdraw the claims based on such a contract from the jurisdiction of this Commission, because it does not deprive them of any of the essential qualities that constitute the character which gives the right to appeal to this Commission; but that in such cases it has to be investigated as to every claim, whether the fact of not fulfilling this condition and of claiming in another way, without first going to the tribunals of the Republic, does not infect the claim with a *vitium proprium*, in consequence of which the absolute equity (which, according to the same protocol, has to be the only basis of the decisions of this Commission) prohibits this Commission from giving the benefit of its jurisdiction (for as such it is regarded by the claimants) to a claim based on a contract by which this benefit was renounced and thus absolving claimants from their obligations, whilst the enforcing of the obligations of the other party based on that same contract is precisely the aim of their claim; and

Whereas the evidence of such a *vitium proprium* can only be the result of an examination of the claim in its details, the jurisdiction of the Commission as to the examination of the case is not impeached by the above-mentioned clause, leaving open for the decision of the Commission the question whether this clause, under circumstances sufficiently evidenced after investigation, forbids the Commission in absolute equity to give claimants the benefit of this jurisdiction as to the decision;

Wherefore this argument does not seem conclusive against the jurisdiction of this Commission.

Whereas, furthermore, the Government of Venezuela, by its honorable agent, opposes that this same claim, being already the object of a suit before the Federal court, it can not, in accordance with article 216 of the code of civil procedure, be withdrawn from the jurisdiction

of that court without the consent of the opposite party, which consent is here failing, it has to be considered that;

Whereas, even admitting the facts as stated by the Government of Venezuela, this argument does not seem to go against the provisions of the protocol, which states that the Commission shall decide all claims without regard to the provisions of local legislation and which at all events does not except claims in litigation, when it speaks about "All claims owned by citizens, etc.;" whilst it should be borne in mind that this protocol is the fundamental law for this Commission and the only source of its jurisdiction; and in which way soever the provisions of the protocol might be discussed in view of the principles of right—international as well as right in general—the adage should not be forgotten, "*dura lex sed lex*," and it must be remembered that this protocol under what circumstances soever originated, is an agreement between two parties, and that the Commission, whose whole jurisdiction is only founded on this agreement, has certainly above all to apply the great rule, "*pacta servanda*," without which international as well as civil law would be a mere mockery; whilst, on the other hand, it is not to be forgotten that this Commission, in the practice of its judicial powers, may find that the *absolute equity*, which according to that same protocol has to be the *only* basis for its decision, forces it to take into consideration, whether conflict with the provisions of local legislation as well as with previous agreements between parties, may infect the claim with that *vitium proprium* in consequence of which that same absolute equity prevents the Commission from making use of the jurisdiction as to the decision:

Whereas, therefore, the arguments opposed do not seem to impeach the prima facie arguments that speak for the jurisdiction of the Commission under the protocol, this jurisdiction has to be maintained and the claim has to be submitted to it.

(DECISION OF CLAIM ON ITS MERITS)

BAINBRIDGE, *Commissioner:*

On the 1st day of February, 1893, a contract was entered into by and between the minister of public works and the governor of the Federal district, sufficiently authorized thereto by the chief of the Executive power, parties of the first part; and Henry F. Rudloff, civil engineer, a citizen of the United States of America, residing in Caracas, party of the second part, whereby:

Rudloff agreed to construct for his own account or through a company, either national or foreign, a building of iron and masonry, principally for a public market on the place where then stood the market of "San Jacinto," including the park "El Venezolano," and the grounds and buildings annexed to said market. He was to construct the building for the market according to the plans presented by him to the minister of public works; he was to commence the work of construction eleven days after the signing of the contract, and to finish the work within two years; he was granted the buildings and grounds above referred to; he was to take exclusive charge of the management and collecting of the proceeds of the market, and the policing of the same from the day on which he commenced the work; the duration of the contract was to be eighteen years.

Rudloff agreed to pay to the municipality of Caracas the following sums: From the first to the fourth year, 75,000 bolivars per year, or for the four years 300,000 bolivars; and from the fifth to the eighteenth year 120,000 bolivars per year, or for the period of fourteen years the sum of 1,680,000 bolivars; a total for the eighteen years of 1,980,000 bolivars. Rudloff agreed to pay these sums to the municipality in daily payments of 205 bolivars and 50 centimos; he agreed to offer yearly at public auction the localities of the market, and the buildings with all its fixtures and utensils was to belong to the municipality without the necessity of any legal transfer, upon the expiration of the eighteen years; free entry through the custom-house of La Guaira was granted for all the materials, fixtures, and tools necessary for the construction of the market, and free use of water for the construction and for the use of the building. The enterprise was not to be subject to any kind of taxes, ordinary or extraordinary, by whatever terms they may be denominated, during the term of the contract, and neither the National Government nor the municipality was to construct or allow to be constructed any other public market in Caracas. Article 12 of the contract provided that the doubts or controversies that may arise on account of the contract shall be decided by the competent tribunals of the Republic, in comformity with the laws, and shall not give reason for any international reclamation.

The foregoing contract was published in the Official Gazette, No. 5717, dated February 8, 1893.

On February 11, 1893, pursuant to the contract, the market to "San Jacinto" and the grounds and buildings appertaining thereto were ceded and delivered to Rudloff by public functionaries thereunto authorized, and the work of construction of the new building was begun.

The evidence shows that on April 30, 1893, the governor of the Federal District entered Rudloff's office, took possession of his books, and made an examination of them, contrary to the provisions of the constitution and laws of Venezuela. Against this unlawful act Rudloff protested to the minister of the interior on the following day.

The fifth article of the contract provided that Rudloff should take exclusive charge of the market and the policing of the same from the day on which he commenced work. Trouble arose with reference to this provision of the contract almost immediately, Rudloff contending that it meant simply that he was to see that the market was kept clean and in a sanitary condition; the municipality, that Rudloff was to pay the salary and rations of the police guards detailed in the market. This controversy was finally referred to the Executive, who decided that Rudloff must pay, which, under protest, he did; whereupon the force of policemen at the market was largely increased.

On July 15 the governor of the Federal District personally ordered the workmen engaged upon the building to suspend the work, threatening with arrest anyone who dared to continue. Through his representative, Mr. Rudloff immediately protested to the minister of public works against the governor's action.

On September 9 the governor informed Mr. Rudloff that the municipal council in its last meeting had declared void the contract for the market and that he would take possession the next day, as in fact he did take possession by armed force on September 10, 1893. The work which had been done by Rudloff was subsequently demolished.

On September 26, 1893, Rudloff addressed himself to the Government of the United States through the Department of State and presented his claim against the Government of Venezuela. In its reply, dated December 22, 1893, through the United States minister at Caracas, the Department of State was of the opinion that the action of the Venezuelan authorities was arbitrary and unjust; but the claimant was advised that before he could invoke the official intervention of the United States it should be made to appear that he had sought redress in the courts of Venezuela and that justice had been there denied him.

On May 8, 1901, the claimants, as successors in interest to Henry Rudloff, began suit against the Government of Venezuela in the chamber of first instance of the Federal court. A decision was rendered on the 14th of February, 1903, favorable to the claimants so far as the existence and validity of the contract and the liability of the Government were concerned; but holding that the amount to be adjudged should be determined by the just estimate of experts, pursuant to the provision of the Civil Code. An appeal was taken from this decision by the parties litigant on the 16th of February, 1903.

In consequence of the protocol signed at Washington on February 17, 1903, for the submission to arbitration of all unsettled claims owned by citizens of the United States against the Republic of Venezuela, the claimants have presented their claim to this Commission.

Before proceeding to answer the claim upon its merits here, the learned counsel for Venezuela entered a plea to the jurisdiction of the Commission upon the following grounds:

First. That the action was still pending in the tribunals of the Republic.

Second. That article 12 of the contract stipulates that the doubts and controversies which might arise by reason of it should be decided by the local courts, and that the contract could never give rise to an international reclamation.

A difference of opinion existing between the Commissioners, the question of jurisdiction was duly submitted to the umpire, who, in an interlocutory decision, sustained the jurisdiction of the Commission to examine the claim.

Answering to the merits, the honorable agent for Venezuela denies the claim in all its parts for the following reasons:

First. Because the nation was not a party to the contract entered into by the predecessor in interest of the claimants.

Second. Because the acts which they say were committed in violation of such contract were done by municipal authorities.

Third. Because in federal republics municipalities are autonomous entities and juridicial personalities, capable of contracting rights and obligations, and for whose acts in the matter of contracts the State can not be responsible.

Fourth. Because the damages claimed are in the greater part remote, unascertained, and indirect damages for the recovery of which the civil law gives no right.

Fifth. Because the contractor violated the contract made with the municipality in the first place, disposing during the time when he was in charge of the market of the whole of its rents.

The objection that the National Government was not a party to the contract can hardly be sustained in view of the fact that the contract

itself shows that it was entered into by the minister of public works and the governor of the Federal District sufficiently authorized by the chief of the Executive power. It is indeed contended that the extent of the national interest consisted in the cession of certain Government lands to the contractor, Rudloff. But the general tenor of the agreement indicates the active participation of the executive authority therein, granting the right of free entry of all materials and tools through the Federal custom-house of La Guaira and the guaranty that neither the National Government nor the municipality would allow any other market to be constructed in Caracas.

It would seem that a sufficient answer to the first as well as to the second and third objections raised by the Government of Venezuela lies in the fact that the Federal District was not at the time of this contract an autonomous entity, but rather a political subdivision of the State directly subject to the executive authority. The decision of the chamber of first instance of the Federal court is, of course, not conclusive upon the Commission, but upon this question of fact it may be cited as authoritative. The court says:

> With reference to the authority which the Chief of the Executive power of the nation had to enter by himself into the contract with Rudloff, it is unquestionable that it was sufficient through the ample powers which it exercised by virtue of the triumph of the revolution of 1892, of which Gen. Joaquín Crespo was the chief, so that in signing the contract by the minister of public works and the governor of the Federal District, these functionaries were the simple agents of the Chief of the Republic who was at the same time, according to the Federal system, the superior chief of the Federal District; [and further] that at the date of the signing of the contract the Federal District had no autonomy, the functions thereof being filled by the Chief of the Republic, who, by appointing discretionally the ministers, the governor of the Federal district, and the members of the executive council, made all these functionaries dependent on his authority, and therefore without any power to control his acts.

In view of the foregoing the responsibility of the National Government for the acts of the governor of the Federal District and of the municipal council is clear. It is equally clear that those acts were wrongful, arbitrary, and unjust. If any consideration of public policy required the abrogation of the Rudloff concession, the proper judicial proceedings should have been taken to that end, and in conformity with law. The seizure of Rudloff's books and correspondence, the imprisonment of his manager, the interference with his workmen, and other hostile acts, were wholly unjustifiable and lawless. Moreover, it is not apparent by what right the National Government, acting through the governor of the Federal District, could annul the contract with Mr. Rudloff. The jurisprudence of civilized states and the principles of natural law do not allow one party to a contract to pass judgment upon the other, but guarantee to both the hearing and decision of a disinterested and impartial tribunal. These encroachments upon the legal rights of their predecessor in interest entitle the claimants herein to a just indemnification.

The claim is summarized as follows:

	Bolivars.
Estimated income from rentals for eighteen years	8,168,500
Amount spent in construction and expense	78,232
Amount paid for policemen's wages	8,645
Damages to credit	600,000
	8,855,377
Less cost of building, interest, maintenance, and payment of municipal rents, as per contract	5,156,576
Total damages	3,698,801

The amount claimed is the sum of 3,698,801 bolivars, equivalent to the sum of $711,307.90 in United States gold.

The learned counsel for Venezuela contends, not without reason, that the damages thus claimed are in their greater parts remote, unascertained, and indirect.

The contract provided that Rudloff should have during the period of eighteen years therein designated the exclusive management and the collection of the proceeds of the market, and that he was to offer yearly at public auction the localities. It contained no agreement for the payment to him by the Government or the municipality of any sum whatever. The adventure was on his part wholly speculative, and his income therefrom was dependent upon the sale of localities, the payment of the rentals by the lessees, the success or failure of his management, and other indeterminate contingencies. Under these circumstances any estimate of the pecuniary advantages derivable from the contract is necessarily conjectural. Damages to be recoverable must be shown with a reasonable degree of certainty, and can not be recovered for an uncertain loss. All that the claimants pretend to prove here, all indeed that from the nature of the case it is possible for them to prove, is that their predecessor in interest might have obtained the income claimed if the Government had not broken the contract. They are necessarily unable to prove with reasonable certainty that he could or would have obtained it. The case presented here is not that of the loss of the prospective profits of an established business, nor is it that of the loss of the ascertained profits derivable from a contract unperformed. It is simply that of the loss of the expected profits of a business venture wrongfully prevented of fulfillment by the defendant Government, and for these expected profits the claimants can not recover, because they are wholly unable to show that a profit would have been made. It is true the general rule of damages for the deprivation of real property is the value of its use—the rental value. But it has been held by respectable authority that when the defendant destroyed a building in course of construction by the plaintiff, the prospective profits which the plaintiff might have made by renting the building are not recoverable. (Bingham *v.* Walla Walla, 3 Wash., 68.) The damages claimed in this item are speculative and contingent, and can not form the basis of an award.[a]

The claim for "loss of credit" is not supported by sufficient evidence, and indeed the damages alleged in that respect, as involving the intervention of the will of the other parties, are too remote and consequential.

But it by no means follows from the foregoing considerations that these claimants are remediless. The evidence is perfectly clear that Rudloff possessed, in virtue of his contract, valuable property rights; that he entered upon the performance of the contract; acted in all matters relating thereto in conformity with its terms, invested upon the faith of it a considerable amount of capital and was apparently ready and willing to comply fully with its obligations. The evidence is also clear that he was denied the protection of the law, was ruthlessly interfered with and harassed, and finally, without a hearing, or judicial procedure of any sort, was by force of arms deprived of his property and of the rights vested in him under the contract. These

[a] See discussion as to speculative damages in Oliva case, p. 771; also Sanchez case, p. 935.

acts of hostility and oppression were committed by the constituted authorities of the Government and evidently in the execution of its plans. In the commission of this wrong against an alien resident, the Government of Venezuela must be held to have assumed the responsibility of making just reparation; and for the wrong thus committed against one of its citizens the Government of the United States, on behalf of the claimants, is entitled to an award justly commensurate with the injuries sustained.

GRISANTI, *Commissioner* (for the commission):

On the 1st of February, 1893, the minister of public works and the governor of the Federal District entered into a contract, sufficiently authorized therefore by the Chief of the Executive Power on one part, and on the other with Henry F. Rudloff, civil engineer, citizen of the United States of America, in virtue of which contract Rudloff undertook—

to construct on his own account or through a company, either national or foreign, a building of masonry and iron, principally for a public market, on the same place which is at present occupied by the market called "San Jacinto," including the square called "El Venezolano," and the grounds and buildings adjoining the actual market, the properties of the municipality (or the Government)." (Art. 1.)

The building ought to have been constructed according to the three plans which the contractor had already presented to the minister of public works. (Art. 2.)

Rudloff undertook to commence the construction of the building eleven days after signing the contract, and to finish the work within the following two years of the same date, allowing him an extension of time of six months. (Art. 3.)

The National Government and the city of Caracas granted to the contractor the buildings and the grounds mentioned in article 1 for the time fixed for the duration of the contract. (Art. 4.)

The contractor should take exclusive charge of the management and collection of the proceeds of the market and management of the police of the same from the day of commencing the work. (Art. 5.)

The duration of the contract was fixed for eighteen years, counting ten days after being signed. (Art. 6.)

The contractor bound himself to pay the municipality of Caracas 1,980,000 bolivars during the eighteen years mentioned, as follows: From the first to the fourth year, inclusive, 75,000 bolivars per annum, and from the fifth to the eighteenth year 1,680,000 bolivars, at the rate of 5,000 bolivars fortnightly. (Art. 7.)

It is evident that on February 11, 1893, Rudloff was placed in possession of the market of San Jacinto and other premises mentioned in Art. 1, and that on that same day he commenced the construction works.

On the 11th of the following May the governor of the Federal District demanded of Rudloff payment for the police which rendered services at the market, adducing therefore the referred-to contract, said payment having been satisfied by Rudloff, compelled to it by the mentioned authority, and having previously protested against the same.

In September, 1893, the governor of the Federal District submitted the mentioned contract entered into with Rudloff, to the consideration

of the municipal council, and said corporation in an accord, issued on the 8th of the month and year just mentioned, resolved:

First. That the aforementioned contract be declared void; second, that the governor be authorized to take possession forthwith of the market and organize it in conformity with the provisions of the ordinance of February 20, 1884, in force with regard to markets, and with the others agreeing therewith; third, to accord for the demolishment of the works carried out in the Plaza de El Venezolano.

This resolution was complied with in all its parts; that is to say, the contract was annulled and the construction of works done by Rudloff was demolished.

The non-jurisdiction of the Commission was alleged by the honorable agent for Venezuela and held by the honorable Commissioner for Venezuela, Doctor Paúl, and the honorable umpire, in his decision of October 24th, decided in favor of the jurisdiction of the Commission, and consequently the case was submitted to it.

In view of the aforementioned statement, perfectly in accordance with convincing documents and proved facts, the Venezuelan Commissioner proceeds to draw his conclusions.

The market is a work belonging to the municipality, but the national Executive appears as contracting it, represented by the minister of public works, together with the governor of the Federal District.

The municipal council of the Federal District had no right to annul of its own free will the referred-to contract in the resolution of November 13, 1895; because, as the municipality was one of the contracting parties, it could not at the same time judge as to the validity or nullity of the same. To obtain said nullity the municipality should apply for a lawsuit to the competent tribunals.

The contract was not submitted to the National Congress in its regular sessions of 1894, for its approval or disapproval, as required by the constitution then in force, and required also by the one actually in force; but it is not just that said omission should be ascribed to the contractor, Rudloff, but to the national Executive, to whom the compliance of said formality corresponded.

It is evident that the Government of Venezuela owes the claimants an indemnification for having suddenly put a stop to a contract which their legator, Henry F. Rudloff, was carrying out; but the undersigned thinks that the amount they demand, of 3,698,801 bolivars, is exceedingly exaggerated, and he agrees to grant them an indemnification of $75,745 United States gold.

TURNBULL, MANOA COMPANY (LIMITED), AND ORINOCO COMPANY (LIMITED) CASES.

(By the Umpire:)

A party to a contract containing a covenant obligating the other party to perform certain obligations, has no right to declare the contract null and void, and must apply to the courts to have it set aside.

In order that a party to a contract containing the clause that "any questions or controversies which may arise out of this contract shall be decided in conformity with the laws of the Republic and by the competent tribunals of the Republic" may make a claim before an international tribunal for damages for its breach, he must first go before the local courts and obtain a judgment that this breach of the contract took place.

A contract containing the clause "any questions or controversies which may arise out of this contract shall be decided in conformity with the laws of the Republic and by the competent tribunals of the Republic," can not be declared void by one of the parties thereto for the nonfulfillment of any of the covenants, and it remains legally existing until so declared by the local tribunals, and another contract made with another party to take effect in case the first contract should become void has no value unless the first contract has been declared by the local tribunals to be inoperative, and no damages will lie for the supposed breach of the second contract.

A claim based upon the payment to the government of a sum of money for rights which the government could not concede, and which rights the claimant was prevented from enjoying by said government, will be allowed for the sum so paid with legal interest from the date of payment.

(These claims were filed separately but grouped in the decision.)

BAINBRIDGE, *Commissioner* (claim referred to umpire):

On the 22d day of September, 1883, a contract was celebrated in the city of Caracas, Venezuela, in the words and figures following, to wit:

[Translation.]

The minister of fomento of the United States of Venezuela, duly authorized by the President of the Republic, of the one part, and Cyrenius C. Fitzgerald, resident of the Federal territory Yuruari, of the other part, have concluded the following contract:

ARTICLE I. The Government of the Republic concedes to Fitzgerald, his associates, assigns, and successors for the term of ninety-nine years, reckoning from the date of this contract, the exclusive right to develop the resources of those territories, being national property, which are hereinafter described.

(1) The island of Pedernales, situated to the south of the gulf of Paria, and formed by the gulf and the Pedernales and Quinina streams.

(2) The territory from the mouth of the Araguao, the shore of the Atlantic Ocean, the waters above the Greater Araguao to where it is joined by the Araguaito stream; from this point, following the Araguaito to the Orinoco, and thence the waters of the upper Orinoco, surrounding the island of Tortola, which will form part of the territory conceded, to the junction of the José stream with the Piacoa; from this point following the waters of the José stream to its source; thence in a straight line to the summit of the Imataca Range; from this summit following the sinuosities and more elevated summits of the ridge of Imataca to the limit of British Guayana; from this limit and along it toward the north to the shore of the Atlantic Ocean, to the mouth of the Araguao, including the island of this name, and the others intermediate or situated in the delta of the Orinoco, and in contiguity with the shore of the said ocean. Moreover, and for an equal term, the exclusive right of establishing a colony for the purpose of developing the resources already known to exist, and those not yet developed of the same region, including asphalt and coal; for the purpose of establishing and cultivating on as high a scale as possible agriculture, breeding of cattle, and all other industries and manufactures which may be considered suitable, setting up for the purpose machinery for working the raw material, exploiting and developing to the utmost the resources of the colony.

ART. II. The Government of the Republic grant to the contractor, his associates, assigns, and successors, for the term expressed in the preceding article, the right of introduction of houses of iron or wood, with all their accessories, and of tools and of other utensils, chemical ingredients, and productions which the necessities of the colony may require; the use of machinery, the cultivation of industries, and the organization and development of those undertakings which may be formed, either by individuals or by companies which are accessory to or depending directly on the contractor or colonization company; the exportation of all the products, natural and industrial, of the colony; free navigation, exempt from all national or local taxes, of rivers, streams, lakes, and lagoons comprised in the concession, or which are naturally connected with it; moreover, the right of navigating the Orinoco, its tributaries and streams, in sailing vessels or steamships, for the transportation of seeds to the colony, for the purpose of agriculture, and cattle and other animals, for the purpose of food and of development of breeding; and, lastly, free traffic of the Orinoco, its streams and tributaries, for the vessels of the colony entering it and proceeding from abroad, and for those vessels which, either in ballast or laden, may cruise from one point of the colony to another.

ART. III. The Government of the Republic will establish two ports of entry at such points of the Colony as may be judged suitable, in conformity with the Treasury Code.

The vessels which touch at these ports, carrying merchandise for importation, and which, according to this contract and the laws of the Republic, is exempt from duties, can convey such merchandise to those points of the colony to which it is destined and load and unload according to the formalities of the law.

ART. IV. A title in conformity with the law shall be granted to the contractor for every mine which may be discovered in the colony.

ART. V. Cyrenius C. Fitzgerald, his associates, assigns, or successors are bound:

(1) To commence the works of colonization within six months, counting from the date when this contract is approved by the Federal council in conformity with the law.

(2) To respect all private properties comprehended within the boundaries of the concession.

(3) To place no obstacle of any nature on the navigation of the rivers, streams, lakes, and lagoons, which shall be free to all.

(4) To pay 50,000 bolivars in coin for every 46,000 kilograms of sarrapia and cauche which may be gathered or exported from the colony.

(5) To establish a system of immigration which shall be increased in proportion to the growth of the industries.

(6) To promote the bringing within the law and civilization of the savage tribes which may wander within the territories conceded.

(7) To open out and establish such ways of communication as may be necessary.

(8) To arrange that the company of colonization shall formulate its statutes and establish its management in conformity with the law of Venezuela, and submit the same to the approbation of the Federal Executive, which shall promulgate them.

ART. VI. The other industries on which the law may impose transit duties shall pay those in the form duly prescribed.

ART. VII. The natural and industrial productions of the colony, distinct from those expressed in Article V, and which are burdened at the present time with other contracts, shall pay those duties which the most favored of those contracts may state.

ART. VIII. The Government of the Republic will organize the political, administrative and judicial system of the colony, also such armed body of police as the contractor or the company shall judge to be indispensable for the maintenance of the public order. The expense of the body of police to be borne by the contractor.

ART. IX. The Government of the Republic, for the term of twenty years, counting from the date of this contract, exempts the citizens of the colony from military service and from payment of imposts or taxes, local or national, on those industries which they may engage in.

ART. X. The Government of the Republic, if in its judgment it shall be necessary, shall grant to the contractor, his associates, assigns, or successors a further extension of six months for commencing the works of colonization.

ART. XI. Any questions or controversies which may arise out of this contract shall be decided in conformity with the laws of the Republic and by the competent tribunals of the Republic.

Executed in duplicate, of one tenor and to the same effect, in Caracas, September 22, 1883.

Señor Heriberto Gordón signs this as attorney of Señor Cyrenius C. Fitzgerald, according to the power of attorney, a certified copy of which is annexed to this document.

[SEAL.]

M. CARABAÑO, *Minister of Fomento.*
HERIBERTO GORDÓN.

The foregoing contract was approved by the Congress on May 23rd, 1884, and a copy thereof with the approbation was published in the Official Gazette, No. 3257, on May 29th, 1884, and it was afterwards published in and among the laws and decrees of Venezuela. (Recopilación, Vol. XI, p. 98.)

On the 19th of February, 1884, an extension of six months was granted to Fitzgerald to commence the work of colonization, the extension to count from March 22 of that year. (Official Gazette, No. 3182.)

On June 14, 1884, Cyrenius C. Fitzgerald granted and assigned said contract-concession to the Manoa Company (Limited), a corporation

created, organized, and existing under and by virtue of the laws of the State of New York.

On August 24, 1884, one J. M. Laralde, government secretary, in the absence of the citizen governor of the territory of Delta, certifies to the arrival at Pedernales on that date of the North American steamer *Wandell*, with Mr. Thomas A. Kelly, superintendent of the Manoa Company (Limited), C. E. Fitzgerald, engineer of the same company, and other employees thereof.

On September 21, 1884, Luis Charbone, national fiscal supervisor, temporarily in charge of the government of the Federal territory of Delta, certified that the Manoa Company (Limited) had commenced the erection of a building and to colonize at the mouth of the river Arature on the 10th of that month, "in conformity with what is established in the contract celebrated between the General Government and Mr. C. C. Fitzgerald on the date of the 22d of September, 1883."

On the 14th of November, 1884, the following certificate was given:

FEDERAL TERRITORY OF THE DELTA,
OFFICE OF THE GOVERNMENT OF THE TERRITORY.

I, Manuel M. Gallegos, governor of the Federal territory of the Delta, on petition of Mr. Thomas A. Kelly, resident administrator of the Manoa Company (Limited), domiciled in Brooklyn, Phoenix Building, 16 Court street, United States of America, certify that on the 24th of August of the present year arrived at this port on the steamer *Wandell* the above-mentioned Mr. Thomas A. Kelly, Mr. C. E. Fitzgerald, engineer of said company, and various employees of the same, so complying with the stipulations of article 5 and of the prorogation authorized on the 19th of February of this year of the contract celebrated with the Federal executive by Mr. C. C. Fitzgerald, of whom the above-mentioned Manoa Company is the successor.

Pedernales, November 14, 1884, 21st of the law and 26th of the Federation.

MANUEL M. GALLEGOS.

On the 7th of October, 1884, the following resolution was issued from the ministry of fomento (Official Gazette, No. 3345):

Resolved, The Cabinet having considered the solicitude of Mr. Heriberto Gordón, attorney for the Manoa Company (Limited), in which he asks, whether there is any contract, anterior or posterior, which impairs or limits the rights which the said company has acquired as successor to the contract celebrated with Mr. C. C. Fitzgerald on the 22d of September, 1883, the President of the Republic has seen fit to declare that the Manoa Company (Limited) has perfect right in accordance with the contract to exploit the products which are to be found within the limits of the lands comprised in this concession.

Communicate it and publish it.

For the National Executive:

JACINTO LARA.

In May, 1885, the Manoa Company (Limited) shipped by the brig *Hope* a consignment of about 338,068 kilograms of asphalt mining and refining machinery, material for houses and wharves, and a steam launch for work on piers, etc. Under date of May 23, 1885, the minister of fomento addressed a note to the minister of hacienda asking for order of exemption of duties on shipment per brig *Hope* under the terms of the Fitzgerald contract.

On March 4, 1885, the Manoa Company, by C. C. Fitzgerald, its president, notified the Venezuelan Government that the agitation of the boundary dispute between Great Britain and Venezuela seriously interfered with the plans of the company in the development of the concession. Fitzgerald stated that he had been notified by the agents of the British Government that the latter would not permit the development of the resources of or the establishment of industries in such

part of the concession as was claimed by it, and would maintain a force for the purpose of hindering trespass thereon. In view of this Fitzgerald requested of the Venezuelan Government a clear statement of the guarantees to be expected in the future as to any interference with the company's rights because of such invasion, and that whatever the result of the negotiations between England and Venezuela, the time lost thereby by the company should not be counted against the company.

On the 1st day of January, 1886, Gen. Guzmán Blanco, envoy extraordinary and minister plenipotentiary of the United States of Venezuela to various courts of Europe, on the one part, and of the other George Turnbull, American citizen, residing in New York, 115 Broadway, and then in London, entered into a contract at Nice, ad referendum, of which articles 1 to 11 were identical with the articles of corresponding numbers in the Fitzgerald contract, with change of names of concessionary. Article 12 of the Turnbull contract is as follows:

This contract shall enter into vigor in case of becoming void through failure of compliance within the term fixed for this purpose of the contract celebrated with Mr. Cyrenius C. Fitzgerald the 22d of September, 1883, for the exploitation of the same territory.

On the 9th of September, 1886, the following resolution was issued from the ministry of fomento (Official Gazette, No. 3852):

UNITED STATES OF VENEZUELA,
MINISTER OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,
Caracas, September 9, 1886.

Twenty-third year of the law and twenty-eighth of the federation:

Resolved, Señor Heriberto Gordón, with power from C. C. Fitzgerald, celebrated on the 22d of September, 1883, with the National Government, a contract for the exploitation of the riches existing in lands of national property in the Great Delta, and the works ought to have been begun within six months from the aforesaid date. In spite of such time having elapsed without commencing the works the Government granted him an extension of time for the purpose; and inasmuch as said contractor has not fulfilled the obligations which he contracted, as stated in the report of the director of national riches, specifying in reference as to article 5 of the contract in question, the councilor in charge of the presidency of the Republic, having the affirmative vote of the Federal council, declares the insubsistency or annulment of the aforesaid contract.

Let it be communicated and published.

By the National Executive:

G. PAZ SANDOVAL.

On the 10th of September, 1886, the following resolution was issued from the ministry of fomento (Official Gazette, No. 3852):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO,
DIRECTION OF TERRITORIAL RICHES,
Caracas, September 10, 1886.

Twenty-third year of the law and twenty-eighth of the federation.

Resolved, By disposition of the citizen Federal councilor of the Republic and with the affirmative vote of the Federal council is approved the contract celebrated by the illustrious American, Gen. Guzmán Blanco, envoy extraordinary and minister plenipotentiary of Venezuela to various courts of Europe, with Mr. George Turnbull for the exploitation of the Delta of the Orinoco, of the following tenor:

Gen. Guzmán Blanco, envoy extraordinary and minister plenipotentiary of the United States of Venezuela to various courts of Europe of the one part, and of the other George Turnbull, American citizen, residing in New York, 115 Broadway, and at present in London, have settled and arranged to celebrate the following contract ad referendum:

(Here follow articles 1 to 11, inclusive, which are identical with the articles or corresponding numbers in the Fitzgerald concession, with change of names of concessionary.)

ART. 12. This contract shall go into effect in case of the becoming void through failure of compliance within the term fixed for this purpose of the contract celebrated with Mr. Cyrenius C. Fitzgerald, the 22d day of September, 1883, for the exploitation of the same territory.

Done three of one tenor to a single effect in Nice the 1st of January, 1886.

GUZMÁN BLANCO.
GEO. TURNBULL.

[L. S.]

Let it be communicated and published.

For the Federal Executive:

G. PAZ SANDOVAL.

The Guzmán Blanco-Turnbull contract was approved by act of Congress on the 28th of April, 1887 (Official Gazette, No. 4048).

On the 13th of March, 1888, the following resolution was issued from the ministry of fomento (Official Gazette, No. 4290:)

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO,
DIRECTION OF TERRITORIAL RICHES,
Caracas, 13th of March, 1888.

Resolved, Señor George Turnbull having purchased 500 hectares of waste lands, situated on both banks of the Caño Corosimo, Manoa district of the Federal territory of Delta, and acquired the ownership, in conformity with the law, of the mine of iron denominated Imataca, situated in the said lands, the President of the Republic, with the vote of the Federal council declares, on the petition of the interested party, that the said mine and lands constitute a property apart from the concession made to said Turnbull according to the contract celebrated on the 1st of January, 1886, and consequently is not submitted to the conditions and obligations of the said contract, but is governed by the decree regulating the law of mines in force.

Let it be communicated and published.

For the Federal Executive:

MANUEL FOMBONA PALACIO.

On the 14th of March, 1888, the ministry of fomento issued the following document (Official Gazette, No. 4292):

The President of the Republic, with the vote of the Federal council:

Whereas it appears that Señor George Turnbull has applied to the Government to grant definite title of ownership of a mine of iron, which, by virtue of the right secured to him by article 23 of the decree regulating the law of the matter, he has accused before the governor of the Federal territory of Delta, which mine is found situated in the Manoa district of the same territory, 1,000 meters from the left margin of the Caño Corosimo starting from a point distant 2,500 meters from its debouchment in the Orinoco, upon a hill called Loma del Monte which runs east and west and whose geographical position is latitude north 8 degrees 29 minutes, longitude west 61 degrees 18 minutes, Greenwich—accusation which has been confirmed by the presentation of the provisional title of said mine issued with date of the 30th of October of the year last past by the governor of the territory, and the requisites provided by the decree regulating the law of mines, dictated the 3d of August, 1897, having been fulfilled—has ordered to concede to Señor Turnbull the ownership of the said mine in all the extension which belongs to it and in respect to all the deposits of iron comprised in the same, in conformity to the denunciation of law made before the said governor. The present title shall be recorded in the respective office of registry, and give right to the concessionary and his successors, for the term of 99 years, to the exploitation and possession of the said mine, with the restrictions of law, and without burden imposed on its mineral products, which are found in the case determined article 40 of the regulating decree already mentioned.

Given, signed, sealed, and countersigned, in the Federal palace at Caracas, March 14, 1888, twenty-fourth year of the law and thirtieth of the federation.

HERMÓGENES LOPEZ.

Countersigned: The minister of fomento.

MANUEL FOMBONA PALACIO.

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO,
DIRECTION OF TERRITORIAL RICHES,
Caracas, 13th of March, 1888.

The law of public lands and the decree regulating the law of mines in force, having been complied with in the accusation made by Mr. George Turnbull, of 500 hectares of public lands for use in the exploitation of the mine of iron which he possesses, denominated Imataca, situated on both margins of the Caño Corosimo, in the district Manoa of the Federal territory of Delta, the President of the Republic, with the affirmative vote of the Federal council, has disposed that the corresponding title of adjudication shall be issued.

Let it be communicated and published.

For the Federal Executive:

MANUEL FOMBONA PALACIO.

On the 14th of March, 1888, the ministry of fomento issued the following document:

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO,
DIRECTION OF TERRITORIAL RICHES.

Having observed the formalities prescribed in the law of June, 1882, and in the decree regulating the law of mines in force, the National Executive, with the affirmative vote of the Federal council, has declared the adjudication, with date of the 3rd instant, in favor of the citizen, George Turnbull, of 500 hectares of waste lands which form the superfices of the mine of iron which said Señor George Turnbull possesses, denominated Imataca, which lands he acquires for uses of the exploitation of said mine, and are situated in the jurisdiction of the Manoa district of the Federal territory of Delta. The land surveyed is bounded on its four sides by lands of national property, conceded by contract to Señor George Turnbull. The 500 hectares surveyed are divided in two sections: 100 hectares to the north of the stream Corosimo, which commences near the village of Manoa and which comprise part of a hill which runs east and west; and 400 hectares to the south of said stream, including part of the Imataca range denominated "Loma del Monte," where is situated the mine of iron owned by Señor Turnbull. The adjudication has been made for the price of 7,100 bolivars in coin, equivalent to 20,000 bolivars of the 5 per cent national consolidated debt, which the purchaser has made over to the office of the board of public credit; and the Government having disposed that the title of ownership of said lands be issued, the subscriber, the minister of fomento, declares, in the name of the United States of Venezuela, that, by virtue of the completed sale, the dominion and ownership of said lands is from now transferred in favor of the purchaser, Señor George Turnbull, with the respective declarations expressed in articles 6, 7, and 8 of the law cited, which, in their letter and contents authorize the present adjudication, and whose terms must be considered as clauses decisive in this respect.

Caracas, 14th of March, 1888.

Twenty-fourth year of the law and 30th of the federation.

MANUEL FOMBONA PALACIO.

On the 28th of June, 1888, the following resolution was issued from the ministry of fomento (Official Gazette, No. 4382):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO,
DIRECTION OF TERRITORIAL RICHES,
Caracas, 28th of June, 1888.

Resolved, The requirements of the decree regulating the law of mines in force, having been complied with, by Señor George Turnbull in the accusation of the mine of asphalt which he has discovered in the district Guzmán Blanco of the Federal territory delta on the borders of the Pedernales channel, on the island of the same name; and having been presented the provisional title of ownership of the mine issued by the governor of aforesaid Federal territory delta, in conformity with article 9 of the aforesaid decree, the President of the Republic, with the vote of the Federal council, resolves: That the definitive title of ownership to the above-cited mine of asphalt for ninety-nine years shall be issued in favor of Mr. George Turnbull.

Let it be communicated and published.

For the Federal Executive: CORONADO.

On the 30th day of June, 1888, the following document was issued by the ministry of fomento:

The President of the Republic, with the vote of the Federal council:

Whereas it appears that Señor George Turnbull has petitioned the Government to issue definite title of ownership of a mine of asphalt which, by virtue of the right conceded by article 23 of the decree regulating the law of the matter, he has accused before the governor of the Federal territory delta, which mine is situated in the district Guzmán Blanco of the territory mentioned, on the shores of the stream of Pedernales on the island of the same name, upon a visible extension of 1,300 meters in length by 500 in width, which runs northeast to southwest, and whose geographical position is as follows: Latitude north, 10 degrees, 11, 7; longitude 62 degrees, 12, 24 west of the meridian of Greenwich; which accusation he has proved by the presentation of the provisional title to said mine, issued under date of the 9th of January of the current year by the governor of the territory; and the requisites provided by the decree regulating the law of mines of August 3, 1887, having been fulfilled, has disposed to concede to Señor George Turnbull the ownership of the said mine in all the extensions which belong to it and in respect of all the deposits comprised in the same, in conformity with the denunciation of law made before the said governor.

The present title shall be registered in the respective office of registry, and give right to the concessionary and to his successors, for the term of ninety-nine years, to the exploitation and profit of the said mine, and without that burden on its products imposed on any mine by reason of being in the case determined by article 40 of the regulating decree already mentioned.

Given, signed, sealed, and countersigned in the Federal palace in Caracas, the 30th of June, 1888, twenty-fifth year of the law and 30th of the federation.

HERMÓGENES LOPEZ.

Countersigned: The minister of fomento.

VICENTE CORONADO.

On the 3d day of October, 1888, the ministry of fomento issued the following document:

THE UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO,
DIRECTION OF TERRITORIAL RICHES.

The formalities prescribed in the law of June 2, 1882, concerning the matter having been observed, the National Executive, with the affirmative vote of the Federal council, has declared the adjudication of this date in favor of Señor George Trumbull of 200 hectares of public lands, destined for the uses of the exploitation of a mine of asphalt which the purchaser possesses, situated in the district Guzmán Blanco of the Federal territory Delta, in the island of Pedernales, and whose boundaries are: Upon the north, groves of mangrove trees and the mine of asphalt which Señor Turnbull actually exploits; upon the south, uncultivated waste lands and the lake denominated Angosturita; upon the east, plains and groves of mangroves; upon the west, agricultural plantations pertaining to various residents of Pedernales, and also some groves of mangroves. The adjudication has been made for the price of 2,970 bolivars in coin, equivalent to 8,000 bolivars of the 5 per cent national consolidated debt, which the purchaser has made over in the office of Public Credit; and the Government having disposed that the title of ownership of said lands shall be issued, the undersigned, the minister of fomento, declares in the name of the United States of Venezuela that by virtue of the completed sale the dominion and ownership of said lands is henceforth transferred in favor of the purchaser, Señor George Turnbull, with the respective declarations expressed in articles 6, 7, and 8 of the law cited, which in their letter and contents authorized the present adjudication, and whose terms must be considered as clauses decisive in the matter. Caracas, October 3, 1888. Twenty-fifth year of the law, and 30th of the federation.

VICENTE CORONADO.

On the 18th of June, 1895, the following resolution was issued by the ministry of fomento (Official Gazette, No. 6433):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO,
DIRECTION OF TERRITORIAL RICHES,
Caracas, June 18, 1895.

Resolved, On April 28, 1887, the national Congress approved the contract ad referendum which was made in Nice the 1st day of January, 1886, by Gen. Guzmán Blanco, envoy extraordinary and minister plenipotentiary to several courts of Europe, and the North American citizen, George Turnbull. The Government had undertaken in that contract to grant for a term of ninety-nine years to the aforesaid George Turnbull the right to exploit the riches found in a large portion of the grand delta of the Orinoco and an exterior portion of territory in Guayana, Lower Orinoco, including the islands of Tortola and Aragua, together with all the franchises in connection with the colonization, exploitation, and development of the aforesaid territories. The national Executive, on its part, has complied with all the obligations incurred upon as per the contract, and it being evident that the cessionary citizen, George Turnbull, during the eight years elapsed since the celebration of the said contract, excepting some steps taken for the exclusive benefit of his own convenience, has not complied with any of the obligations stipulated, neither has he exercised any act in favor of the interests of the nation, nor by any means profitable to the development of the natural riches of the regions that were the object of the concession, the President of the Republic considering as injurious and fruitless to the nation the concession granted to the citizen George Turnbull, has decided to declare the annulment of the contract ad referendum, signed at Nice the 1st day of January, 1886, which was approved by the Executive of the Republic on September 10th of the same year, comprising in the same case of nullity and insubsistency of the aforesaid contract the concession of the "Imataca" iron mine, definitive title to which was issued March 13, 1888, and the concession of the asphalt mine situated in the island of Pedernales, the definitive title of which was issued June 28 of the same year, as well as any other rights, titles, or concessions deriving from the said contract.

Let this be communicated and published.

By the national Executive:

JACINTO LARA.

On the same day, to wit, the 18th day of June, 1895, the ministry of fomento issued the following resolution (Official Gazette, No. 6433):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO,
DIRECTION OF TERRITORIAL RICHES,
At Caracas, June 18, 1895.

Resolved, After having considered in the cabinet the petition addressed to this ministry by the Manoa Company (Limited), which among other things solicits the ratification, confirmation, and execution in its favor of all the rights and privileges conceded to Cyrenius C. Fitzgerald on the 22d day of September, 1883, by the contract declared insubsistent on the 9th day of September, 1886, the President of the Republic, after examination of the same, has declared the caducity, for reason of want of faithful compliance with its obligations and stipulations of the concession of George Turnbull, and has substituted therefor in the same rights and privileges the aforesaid contract, and has seen fit to dispose and authorize the said Manoa Company (Limited), within six months reckoning from the date of this resolution, to renew its works of exploitation in order to the greater development of the natural riches of the territories embraced in said concession, hereby confirming it in all the rights stipulated and granted to said Fitzgerald by the said contract of September 22, 1883. And the said Manoa Company (Limited) shall report to the national Executive from time to time through the organ of this ministry all of the works carried on by it in execution of said contract, in order that the Government may be enabled to judge of its compliance with the obligations of said contract in conformity with the spirit and the magnitude of its stipulations.

Communicate and publish.

By the national Executive:

JACINTO LARA.

On the 10th of July, 1895, a resolution was issued by the ministry of fomento as follows (Official Gazette, No. 6451):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO,
DIRECTION OF TERRITORIAL RICHES,
Caracas, July 10, 1895.

Resolved, After having considered in the council of ministers the petition addressed to this office by the Citizen George Stelling, vice-president of the board of directors of the National Anonymous Company called "Mines of Pedernales," requesting the modification of the resolution issued on June 19 last, by which the general concession granted to the Citizen George Turnbull was declared null, in order to except from the said annulment the mine of Pedernales and the 200 hectares of public lands belonging to the aforesaid company, the President of the Republic, after studying the documents filed by the petitioner and taking into consideration:

First. That in accordance with article 28 of the mining law under which the definitive title to the asphalt mine of the Pedernales Island was granted, said title "can be transferred to any person able to contract."

Second. That as per article 50 of the same laws and the documents filed by the petitioner on November 19, 1890, date on which Citizen George Turnbull transferred to the National Company "Mines of Pedernales" the above referred mining concession and the 200 hectares of public lands needed for its exploitation, the definitive title issued had not been voided or annulled inasmuch as the cessionary had been exploiting the mine therein mentioned; and finally, that the National Company "Mines of Pedernales" obtained the property through a good title, has been possessing in good faith and has been and is now exploiting the said asphalt mine, as per evidence shown in the documents which were filed, so that respecting the said mine the failure of fulfillment on the part of the concessionary, upon which the said resolution of June 10 of the present year is based, is not applicable; does hereby resolve in equity and justice that the said resolution of June 19 last, in which the contract celebrated with the Citizen George Turnbull was declared null, does not in any way affect the rights, legitimately acquired, of the asphalt mine of the Pedernales Island, nor the 200 hectares of land destined to its exploitation by the National Anonymous Company, called "Mines of Pedernales," which company shall, consequently, be at liberty to go on with the works of the aforesaid mine and the 200 hectares of public land referred to.

JACINTO LARA.

On November 20, 1896, the following resolution was issued from the ministry of fomento (Official Gazette, No. 6877):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO,
DIRECTION OF TERRITORIAL RICHES,
Caracas, November 20, 1806.

Resolved, Having considered at the council of ministers the petition addressed to this department by Citizen George Turnbull, therein proving—as per the documents attached thereto—that the said George Turnbull lawfully obtained the definitive title to the iron mine called "Imataca," situate on both banks of the Caño Corosimo of the Manoa district of the Federal territory Delta; that he complied with the requirements of the land laws, and paid for the price of the adjudgment of 500 hectares of land which comprise the superficial area of said mine; that by virtue of George Turnbull having acquired the aforesaid mine and lands, the national Executive, by resolution of March 13, 1886, declared that said mine and lands constitute a separate property from the Manoa concession granted to the above-mentioned Turnbull as per contract made January 1, 1886, not being subject therefor, to the obligations of the aforesaid contract, but which will be ruled by the decrees regulating the mining laws; that it is also proved that the above-mentioned Turnbull has maintained the aforesaid mine in exploitation, according to the legal regulation, and finally, that at the Ciudad Bolívar custom-house the mining taxes were paid corresponding to the 500 hectares which formed said mining concession; the citizen President of the Republic has thought fit to decide: that the resolution of this department of June 18, 1895, published in the Official Gazette of June 19 of the same year, marked No. 6433, declaring the annulment of the contract made January 1, 1886, with the above-mentioned Turnbull for the exploitation of a portion of the

Delta of the Orinoco, does in no way affect the rights legitimately acquired by him to the "Imataca" iron mine, which is hereby excluded from the aforesaid resolution, together with the 500 hectares of land forming its superficial area, and, consequently, the citizen, George Turnbull, remains authorized to continue the exploiting of the mine and public lands referred to.

Let it be notified and published.

For the national Executive:

MANUEL A. DÍAZ.

On the same day the following resolution was issued by the minister of fomento (Official Gazette, No. 6877):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO,
DIRECTION OF TERRITORIAL RICHES,
Caracus, November 20, 1896.

Resolved, Having considered at the council of ministers the petitions addressed to this department by the Citizens J. A. Radcliffe, J. A. Bowman, James P. Elmer, Francisco de P. Suarez, Luis Aristigueta Grillet, George N. Baxter, and Ellis Grell, in behalf and by authority of the companies called "Manoa Company, Limited," "Orinoco Mining Company," and "Orinoco Company, Limited," as well as to reports and other documents filed; the citizen president of the republic, wishing to put an end to the difficulties which have presented themselves preventing the exploitation of the delta of "the Orinoco concession," otherwise known as "The Manoa," referred to in the resolutions of June 18, 1895, has thought fit to recognize as valid the transfer made by the "Manoa Company, Limited" to the "Orinoco Company, Limited" of all its rights and title to and in the aforesaid concession with the exception of the "Imataca Iron Mine," situate on both banks of the Caño Corosimo in the Manoa district of the old Federal territory Delta and the 500 hectares of public lands which comprise its superficial area, as well as the asphalt mine called "Minas de Pedernales," situate in the island of the same name, together with the 200 hectares destined for its exploitation. He acknowledges, likewise, as valid the work and all other acts of the "Orinoco Company, Limited" (successor to the "Manoa Company, Limited") done and performed by them in fulfillment of the terms of the resolution of June 18, 1895, and the President of the Republic disposes that the said company be granted the exemption from payment of custom-house duties on machinery and other effects, imported through the Ciudad Bolívar custom-house destined to the works of said concession; and, finally, that all the facilities be granted to the interested parties for the aforesaid exploitation providing such facilities be not in opposition to the laws and resolutions of the Republic in force.

Let it be notified and published.

For the national Executive:

MANUEL A. DÍAZ.

On the 10th of October, 1900, the following resolution was issued by the ministry of fomento (Official Gazette, No. 8053):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO,
DIRECTION OF TERRITORIAL RICHES,
Caracas, October 10, 1900.

Resolved, Considering that the contract celebrated September 22, 1883, with Cyrenius C. Fitzgerald, and on which the Orinoco Company, Limited, now bases its rights for the exploitation of the natural riches in the Delta of the Orinoco and colonization of the land conceded, has now no legal existence, for that it was declared void for failure of performance of what was in it stipulated; that in April, 1887, the national Congress approved a contract celebrated with the North American citizen, George Turnbull, in the same regions and with the same clauses, and in all equal with that of the Manoa Company, Limited, (cessionary of Fitzgerald) declared void, which was also for the same clauses declared in caducity on the 18th of June, 1895; and that on the same day of the said month and year, this office issued an Executive resolution restoring to the Manoa Company, Limited, the rights and privileges conceded by the original contract with Fitzgerald in 1883; and

Considering (first) the contract celebrated with C. C. Fitzgerald having been declared void for failure of compliance with article 5th, this can not be considered in vigor without the intervention of a new contract approved by the national congress; (second) that the legislature of the State of Bolívar, in its ordinary session of

1899, adopted a joint memorial to the national congress, declaring that the company cessionary of the contract celebrated with Fitzgerald had not complied in its fourteen years of existence with any of the clauses established in article 5 of the said contract and that this interferes with the interests of the Venezuelans for exploiting the natural products of that region of the Republic; and (third) that according to the notes and reports forwarded to this office by the authorities of the different places of the region to which refers the concessions already mentioned, all concur in the failure of performance of the same and of the palpable evils which it occasions, as well to the national treasury as to the individual industries.

The supreme chief of the Republic has seen fit to dispose: That the mentioned contracts are declared insubsistent.

Let it be communicated and published.

For the national Executive:

RAMÓN AYALA.

The following provisions of the constitution of Venezuela adopted in 1881 and in force on September 22, 1883, are pertinent to the consideration of these claims. Similar provisions are found in the later constitutions of the Republic.

By paragraph 15, article 13, of this constitution the States of the Federation agree to cede to the Government of the Federation the administrations of the mines, public lands, and salt deposits, to the end that the former shall be governed by a system of uniform exploitation and the latter for the benefit of the people.

Title 5, section 1, article 66, provides in relation to the powers of the Executive:

Besides the foregoing powers of the United States of Venezuela, he, with the deliberative vote of the Federal Council, shall exercise (inter alia) the following:

PAR. 2. Administer the public lands, the mines and the salt deposits of the States by delegation of an authority from the latter.

PAR. 6. Celebrate contracts of national interest in accordance with the laws and submit the same to the legislature for its approval.

Title 5, section 2, article 69, provides in relation to the ministers as follows:

The ministers are the natural and public organs of the President of the United States of Venezuela. All his acts shall be subscribed by them, without which requisite they shall not be complied with nor executed by the authorities, by employees, or by private individuals.

Among the powers of the Congress enumerated in Title 4, section 5, article 43, is the following, paragraph 17:

To approve or reject the contracts concerning national works which the President, with the approval of the Federal council, shall make, without which requisite they shall not become effective.

Of the high Federal court the constitution in Title 6, section 2 of article 80, provides, paragraph 9a, that it shall—

Take jurisdiction of the controversies which result from the contracts or negotiations which the President of the Federation may celebrate.

The act of Congress of May 7, 1881, providing for the organization of the high Federal court, prescribes in regard to the said court that it shall have the power (inter alia):

To take jurisdiction in the first and sole (única) instance—

First. Of the judicial matters comprised in the attributions 1, 2, 3, 4, and 9 of article 80 of the constitution, and in No. 30 of article 13.

These three claims are so intimately related in respect of the facts and circumstances out of which they arise that they are herein considered together.

The Fitzgerald contract of September 22, 1883, was executed in strict conformity with constitutional requirements. It was signed on behalf of the Government by the minister of fomento, "duly authorized by the President of the Republic." It was approved by the Federal council. It was submitted for approval to the National Legislature, and was by it approved on the 23d day of May, 1884, and it received the formal sanction and signature of the President on May 27, 1884. It was published in the Official Gazette, No. 3257, on May 29, 1884.

The instrument thus solemnly executed constituted a bilateral contract, giving rise, as between the parties thereto, to certain mutual rights and obligations. The Government of Venezuela granted to Fitzgerald, his associates, assigns, and successors, for the term of ninety-nine years, reckoning from the date of the contract, the exclusive right to develop the resources of the territories designated; and, for an equal term of years, the exclusive right of establishing a colony for the purpose of developing the resources already known to exist, and those not yet developed of the same region, including asphalt and coal. The Government agreed that a title in conformity with the law should be granted to the contractor (Fitzgerald) for every mine which might be discovered in the colony. Fitzgerald agreed to perform the stipulations of Article V in respect to exploration and colonization therein set forth. The parties mutually agreed that any questions or controversies which might arise out of the contract should be decided in conformity with the laws of the Republic and by its competent tribunals. The constitution of the Republic provided that the high Federal court had jurisdiction of the controversies which might result from the contracts celebrated by the President.

Fitzgerald assigned the contract-concession to the Manoa Company, Limited, on June 14, 1884. The evidence shows that the company, within the time stipulated in the contract and its prorogation of February 19, 1884, commenced the work of exploitation and colonization. It proceeded with the work until in the spring of 1885 it encountered serious difficulties resulting from a domestic revolution headed by General Pulgar, and from the aggression of the British Government upon the territories included within the concession. The company duly notified the Venezuelan Government of these difficulties.

In December, 1885, one George Turnbull, a citizen of the United States, entered into negotiations with Gen. Guzmán Blanco, ex-President of Venezuela, and at that time occupying the position of envoy extraordinary and minister plenipotentiary of Venezuela to various courts of Europe, and these negotiations resulted in the signing at Nice on January 1, 1886, of an ad referendum contract substantially of the same purport and tenor as the Fitzgerald contract, granting to Turnbull the same rights and privileges in the territories designated as had previously been conceded to Fitzgerald and his assigns, and containing the provision that it should become effective in case of the becoming void through failure of compliance within the term fixed for this purpose of the Fitzgerald contract for the exploitation of the same territory.

The time fixed for beginning the work of colonization in the Fitzgerald contract expired on September 22, 1884, prior to the Guzmán Blanco-Turnbull agreement, and no evidence is presented here of any complaint by the Government of Venezuela of nonfulfillment with its

terms on the part of the concessionaries prior to that date, nor is any evidence presented of authority on the part of Guzmán Blanco in his capacity as envoy extraordinary and minister plenipotentiary to various courts of Europe to enter into the contract with Turnbull for a concession for the public lands and mines—that power being by the constitutional provisions above quoted vested in the President of the Republic. The article recognizes the then existence and validity of the Fitzgerald concession. But in view of the well-known dominant influence of Guzmán Blanco in Venezuelan affairs at the time, and the practical certainty of its ratification the obvious effect of the Turnbull agreement was to work grave injury to the interests and credit of the Manoa Company, Limited.

On the 9th of September, 1886, by Executive resolution issued through the ministry of fomento, "the councilor in charge of the Presidency, having the affirmative vote of the Federal council," declared the insubsistency or annulment of the Fitzgerald concession upon the ground that the contractor had not fulfilled the obligations of the contract as stated in the report of the director of the national riches, specifically referring to the provisions of Article V thereof. One day later an Executive resolution declared the approval of the Guzmán Blanco-Turnbull contract of January 1, 1886; and said contract was approved by Congress on April 28, 1887.

It is perfectly evident that the question whether or not the Manoa Company, Limited, had fulfilled the obligations of the contract, or any controversies as to that fact, was a question or controversy arising out of the contract, determinable, according to law and the agreement of the parties, only by the competent tribunals of the Republic. The Government of Venezuela, being a party to the contract, was not competent to decide such a controversy. The jurisprudence of civilized States and the principles of natural justice do not allow one party to a contract to pass judgment upon the other. If the Government had any reason to believe that the grantees of the concession—

had, by misuser or nonuser thereof, forfeited their rights, then it should have itself appealed to the proper tribunals against the said grantees, and there, by due process of judicial proceedings, involving notice, full opportunity to be heard, consideration, and solemn judgment, have invoked and secured the remedy sought. (Salvador Commercial Co. Case.—For. Rel. U. S., 1902, p. 871.)

Nemo debet esse judex in propia sua causa.

Moreover, the Executive resolution of September 9, 1886, annulling the Fitzgerald contract, was an illegal assumption of power. Under the constitution of Venezuela the Executive was clothed with no such prerogative. Jurisdiction of controversies arising out of contracts celebrated by the President was vested solely in the high Federal court. (Par. 9, art. 80, Const. and Law of May 7, 1881.)

The decree, in the absence of legal authority in the Executive to issue it, was an absolute nullity.

The decision of the high Federal court under identical constitutional provisions rendered August 23, 1898, in the case of the New York and Bermudez Company would seem to be conclusive upon the point. That company claimed under a contract similar to that under consideration here. On January 4, 1898, the contract of the New York and Bermudez Company, for alleged failure of performance by the concessionary, was declared null by Executive resolution. The matter

was brought by petition of the company before the high Federal court, which, by its judgment of August 23, 1898, declared that—

> the Executive resolution passed by the National Government, dated the 4th of January of the present year, declaring broken and determined the contract of which the New York and Bermudez Company is concessionary, is null and void.

The court says in its opinion:

> The only point for our investigation is whether or not the Executive resolution which has given rise to the petition of the representative of the New York and Bermudez Company constitutes an act of usurped authority.

Notwithstanding the Executive resolution of September 9, 1886, the Fitzgerald contract remained subsistent and effective to vest in the grantees all the rights and privileges therein designated. And it follows that the subsequent approval of the Guzmán Blanco-Turnbull contract could not operate to invest Turnbull with the same rights and privileges, inasmuch as the Government could not grant to Turnbull the rights which it had previously granted to and which were legally existing in the grantees of the Fitzgerald contract.

It appears from the evidence that on March 14, 1888, the President of the Republic, with the affirmative vote of the Federal council, declared the adjudication in favor of George Turnbull of 500 hectares of land which forms the superficies of the "Imataca" iron mine, under the formalities of the law relating to waste lands of June 2, 1882. The adjudication was made for the price of 7,100 bolivars in coin, equivalent to 20,000 bolivars of the 5 per cent national consolidated debt, which it is alleged Turnbull made over to the office of the board of public credit; and the Government having disposed that the title of ownership of said lands be issued, the minister of fomento declared in the name of the United States of Venezuela that by virtue of the completed sale the dominion and ownership of said lands was transferred in favor of the purchaser, George Turnbull.

On the same day, the President of the Republic, with the vote of the Federal council, pursuant to the provisional title to the "Imataca" mine, issued by the governor of the Federal territory Delta on October 30, 1887, to George Turnbull, and in accordance with the provisions of the decree regulating the law of mines, dictated August 3, 1887, conceded to George Turnbull the ownership of said mine in all the extension which belongs to it and in respect of all the deposits of iron comprised in the same; giving to the said Turnbull as concessionary and his successors for the term of ninety-nine years the right to the exploitation and possession of said mine.

On the 30th of June, 1888, the President of the Republic, with the vote of the Federal council, conceded to George Turnbull a definitive title to the mine of asphalt situated in the district of Guzmán Blanco in the Federal territory Delta on the island of Pedernales, "the requisites provided by the decree regulating the law of mines of August 3, 1887, having been fulfilled."

On October 3, 1888, the national Executive, with the affirmative vote of the Federal council, declared the adjudication in favor of George Turnbull of 200 hectares of public lands, "destined for the exploitation of a mine of asphalt which the purchaser possesses," situated in the district of Guzmán Blanco of the Federal territory Delta in the island of Pedernales. The adjudication was made for the price of 2,970 bolivars in coin, equivalent to 8,000 bolivars of the 5 per cent

national consolidated debt, which Turnbull is alleged to have made over to the office of public lands; and the Government having disposed that the title of ownership of said lands shall be issued, the minister of fomento declared in the name of the United States of Venezuela that by virtue of the completed sale the dominion and ownership of said lands was henceforth transferred in favor of the purchaser, George Turnbull.

It is difficult to perceive in what manner these grants to George Turnbull can be sustained, in view of the fact that at the time they were made the Fitzgerald contract had not been judicially declared forfeited and was in full force and effect. The lands and mines described in the Turnbull titles are within the territory designated in the Fitzgerald concession. The Government of Venezuela by the latter instrument conceded to Cyrenius C. Fitzgerald, his associates, assigns, and successors for the term of ninety-nine years, the exclusive right to develop the resources of—

> the island of Pedernales [and] the territory from the mouth of the Araguao, the shore of the Atlantic Ocean, the waters above the Greater Araguao to where it is joined by the Araguaito stream; from this point, following the Araguaito to the Orinoco, and thence the waters of the upper Orinoco, surrounding the island of Tortola, which will form part of the territory conceded, to the junction of the José stream with the Piacoa; from this point following the waters of the José stream to its source; thence in a straight line to the summit of the Imataca Range; and from this point following the sinuosities and more elevated summits of the ridge of Imataca to the limit of British Guayana; from this limit and along it toward the north shore of the Atlantic Ocean, and, lastly, from the point indicated, the shore of the Atlantic Ocean to the mouth of the Araguao, including the island of this name and the others intermediate or situated in the delta of the Orinoco, and in contiguity with the shore of the said ocean.

Moreover, and for an equal term of years, the Government of Venezuela conceded to the grantees of the Fitzgerald contract—

> the exclusive right of establishing a colony for the purpose of developing the resources already known to exist and those not yet developed of the same region, including asphalt and coal, etc.

And, furthermore, the Government of Venezuela agreed with Fitzgerald, his associates, assigns, and successors that—

> a title in conformity with the law shall be granted to the contractor for every mine which may be discovered in the colony.

If the grants to Turnbull are valid, then the language of the Fitzgerald franchise is meaningless, for on any such theory the Government of Venezuela could by piecemeal take away from the grantees of the Fitzgerald concession and give to others every right or privilege therein conferred. It is perfectly clear that the Government, having in 1883 transferred the exclusive right of developing and exploiting the resources of the territory in question to Fitzgerald and his assigns, could not in 1888 transfer to Turnbull the right to any part of the resources of that same territory, for the plain and simple reason that the Government could not transfer what it did not possess. That he who is prior in time is stronger in right is a maxim of both the civil and the common law. The Fitzgerald concession of September 22, 1883, not having been declared forfeited by any competent judicial authority, after notice, hearing, and judgment, was in 1888 a legally subsisting and valid agreement, binding upon both the parties to it, vesting in the grantees the exclusive right of exploitation of the Delta

territory and the island of Pedernales and imposing upon the Government of Venezuela the obligation to grant a title in conformity with the law to Fitzgerald or his assigns for every mine discovered in the colony. The Turnbull titles of 1888 were in derogation of these prior rights and obligations and vested in the grantee no rights whatever. They were altogether null and void.

The hostile and arbitrary acts of the Government, which the Manoa Company (Limited), assignee of the Fitzgerald contract, was wholly powerless to prevent, were calculated to and, it is alleged, did paralyze the operations of the company, impaired its credit, and prevented the further prosecution of its work of exploitation. So matters stood until, on the 18th of June, 1895, the Government declared the annulment of the Turnbull contract of January 1, 1886, and the definitive titles to the Imataca iron mine and the Pedernales asphalt mine, which had been issued to Turnbull in 1888, and on the same date the Government reaffirmed the Fitzgerald contract of September 22, 1883, and authorized the Manoa Company (Limited), within six months from that date, to renew its works of exploitation in order to the greater development of the natural riches of the territory embraced in said concession, requiring the company to report to the National Executive from time to time through the ministry of fomento all of the works carried on by it in execution of the contract.

These resolutions of June 18, 1895, in no wise changed the legal status of the various interested parties. The Fitzgerald contract had never been legally annulled. The Guzmán Blanco-Turnbull contract of January 1, 1886, and the Turnbull titles of 1888 had never been legally effective, but were invalid ab initio. The resolution in favor of the Manoa Company, however, amounted to an authorization by the Venezuelan Government to the renewal of the work of exploitation and colonization, a permission of which the company promptly availed itself, as its reports presented in evidence here clearly show.

On the 10th of July, 1895, the Government, at the instance of the National Anonymous Company, "Mines of Pedernales," resolved that "the resolution of June 19 (18) last, in which the contract celebrated with the citizen, George Turnbull, was declared null," did not in any way affect the rights legitimately acquired of the asphalt mine of the Pedernales Island, nor the 200 hectares of land destined to its exploitation by the National Anonymous Company, called "Mines of Pedernales," which company was, consequently, at liberty to go on with the works of the aforesaid mine and the 200 hectares of public land referred to.

On the 20th of November, 1896, upon the petition of George Turnbull, the President of the Republic thought fit to decide that the resolution of June 18, 1895, declaring the annulment of the contract made January 1, 1886, with the above-mentioned Turnbull for the exploitation of a portion of the Delta of the Orinoco, did in no way affect the rights legitimately acquired by him to the "Imataca" iron mine, which was thereby excluded from the aforesaid resolution, together with the 500 hectares of land forming its superficial area, and, consequently, the citizen, George Turnbull, remained authorized to continue the exploitation of the mine and public lands referred to.

These resolutions are merely reassertions of the original Turnbull titles of 1888, and, like their originals, are in plain derogation of the prior and subsisting rights of the grantees of the Fitzgerald concession,

and altogether null and void. The National Anonymous Company, "Mines of Pedernales," could not have occupied the position of innocent purchaser, inasmuch as the Fitzgerald contract had been for many years a matter of public record.

On the 16th of October, 1895, the Orinoco Company was organized under the laws of the State of Wisconsin, and on the following day the Manoa Company (Limited), conveyed to the said Orinoco Company the property described in the Fitzgerald concession until September 21, 1982, excepting, however, the Pedernales asphalt mine and the Imataca iron mine. On February 4, 1896, the Orinoco Mining Company was incorporated under the laws of the State of Wisconsin, and on February 10, 1896, the Orinoco Company conveyed to the Orinoco Mining Company all its rights in the concession as transferred to it by the Manoa Company (Limited), (i. e., reserving and excepting the Pedernales asphalt mine and the iron mine of Imataca).

The Orinoco Mining Company on October 1, 1896, filed in the office of the secretary of state of the State of Wisconsin an amendment to its articles of association, changing its name to Orinoco Company (Limited); and on October 17, 1896, the Manoa Company (Limited) and the Orinoco Company certified to the transfer of title of all the lands, rights, interests, privileges, and immunities originally granted by the Fitzgerald contract (except as to the asphalt and iron mines) to the said Orinoco Company (Limited). The Manoa Company (Limited), on May 15, 1895, conveyed to William M. Safford the location of the Imataca iron mine; and the same company had on October 17, 1895, conveyed to Samuel Grant the Pedernales asphalt deposits. These conveyances are evidently explanatory of the reservations and exceptions as to the said properties in the transfer above set forth.

On November 20, 1896, the President of the Republic of Venezuela, "wishing to put an end to the difficulties which have presented themselves, preventing the exploitation of the Delta of the Orinoco, otherwise known as the 'Manoa,' referred to in the resolutions of June 18, 1895," recognized as valid the transfer made by the "Manoa Company (Limited)" to the "Orinoco Company (Limited)" of all its rights and titles to and in the said concession, with exception of the mine of iron, "Imataca," situated on both banks of the stream Corosimo, in the Manoa district of the old Federal territory Delta, and the 500 hectares of public lands which comprise its superficial area, and of the mine of asphalt called "Minas de Pedernales," situated on the island of the same name, together with the 200 hectares of public land destined for its exploitation. He acknowledged likewise as valid the work and other acts of the "Orinoco Company (Limited)" (successors to the "Manoa Company (Limited)" done and performed by them in fulfillment of the terms of the resolutions of June 18, 1895, and disposed that the said company be granted the exemption from payment of custom-house duties on machinery and other effects imported through the Ciudad Bolívar custom-house destined to the works of said concession; and that all facilities be granted to the interested parties for the aforesaid exploitation, providing such facilities be not in opposition to the laws and resolutions of the Republic in force.

On December 30, 1896, James A. Radcliffe, receiver of the Manoa Company (Limited), William M. Safford and George N. Baxter, trustees, conveyed to the Orinoco Company (Limited), its successors and assigns, the contract and concession of September 22, 1883. The deed

recites that at a special term of the supreme court of the State of New York, a court of general jurisdiction, sitting in the county of Kings, on the 3d day of March, 1896, it was, among other things, ordered, adjudged, and decreed by the said court in a certain action then pending, and which was commenced on the 14th day of February, 1896, between Randolph Stickney and the Manoa Company (Limited) for a sequestration of the property of said company, pursuant to the laws of the State of New York, that the said James A. Radcliffe be appointed permanent receiver of said Manoa Company (Limited), and that by its judgment of November 11, 1896, said court ordered the said receiver to sell at public auction all the rights, title, and interest of said Manoa Company (Limited) in and to said concession to the highest bidder and make report of said sale to the court, and that said receiver did on the 28th day of November, 1896, sell said property to William M. Safford and George N. Baxter, they being the highest bidders; and that said report of the receiver was afterwards confirmed and the receiver ordered to make a deed to the parties named, which was done; and that the said Safford and Baxter declared that they bid in said property as trustees for the Orinoco Company (Limited), and that the said Safford and Baxter in the execution of said trust joined in said deed to the Orinoco Company (Limited).

The Orinoco Company (Limited), on July 22, 1897, entered into a contract with the Orinoco Iron Company, a corporation organized under the laws of the State of West Virginia, whereby it granted to the said iron company the right to mine and ship any and all deposits of iron ore on the Fitzgerald concession which it had the right to exploit under its contract for the unexpired term thereof in consideration of certain stipulated royalties. The president of the Orinoco Iron Company was Albert B. Roeder, its secretary was Benoni Lockwood, jr., and its treasurer was James E. York.

It appears from the evidence that on the 30th day of March, 1895, George Turnbull, then residing in London, entered into a contract with one Joseph Robertson, of London, as trustee of a syndicate thereafter to be formed and called the Orinoco Iron Syndicate (Limited), under the English companies acts of 1862 to 1890, the object of which syndicate was to examine, test, and work the "Imataca" iron mine and to output and market iron ore, timber, and other commercial products on the land during the period of one year from the date of their shipment of the first cargo therefrom; if the said syndicate should be satisfied with the result of their trial, they were to register a limited company under said acts within twelve months for the purpose of acquiring the said property, which Turnbull agreed to lease and convey with his whole rights and interests therein and the ores and minerals therein and thereunder. The syndicate was bound on or before January 15, 1896, to intimate to Turnbull whether or not they intended to go on with the formation of said company. The Orinoco Iron Syndicate was afterwards formed and, on September 18, 1895, adopted the agreement between Turnbull and Robertson of March 30, previous.

The English company, the Orinoco Iron Syndicate (Limited), chartered the schooner *New Day* and shipped therein to Venezuela its employees, machinery, material, and supplies. The *New Day* proceeded to Manoa, where on January 20, 1896, the machinery, materials, and supplies were landed. For failure to land at the proper port of

entry, Ciudad Bolívar, the *New Day* and her cargo were denounced by Gen. Joaquín Berrio, the then administrator of customs at said port, and proceedings were instituted in the national court of hacienda of Ciudad Bolívar against the schooner, her captain, and the Orinoco Iron Syndicate (Limited), resulting in a judgment on May 9, 1896, imposing a fine upon the syndicate of 249,985.17 bolivars. This judgment was affirmed on September 24, 1896, by the high Federal court. On November 14, 1896, the court of hacienda decreed the embargo of all the rights, shares, and belongings which the Orinoco Iron Syndicate had in the lands and mines of Manoa. On October 18, 1898, the said court ordered the sale, by public auction, of the rights of exploitation acquired by the Orinoco Iron Syndicate (Limited) in the iron mines of Manoa, situated on both banks of the Corosimo stream, so as to pay with the product the duties owing, according to the liquidation made to the national treasury and to General Berrio, denouncer and apprehender of the contraband introduced, and the other expenses and costs of suit; that the said right of exploitation acquired in the iron mine of Manoa by the said company had been appraised by experts appointed for that purpose at 200,000 bolivars; that the rights which the company had in the mine of Manoa included 500 hectares of surface according to the acknowledgment of right made by the National Executive in a resolution of November 20, 1896.

Pursuant to the above-cited order of the court of hacienda the judicial sale took place in the said court on November 18th, 1898. Benoni Lockwood, jr., being the highest bidder at the sale, was declared the purchaser of the property sold upon his offer of 120,000 bolivars, to be paid within fifteen days from the date of sale. Robert Henderson was nominated the depositary. The court declared that the condition stipulated in Lockwood's proposition being complied with he should be put in possession of the auctioned rights, and that a certified copy in due form of the sale should be issued to him to serve as title of property. The time for payment was extended to December 20. On the December 19 Carlos Hammer, with power of attorney from Benoni Lockwood, jr., paid into the court the sum of 120,000 bolivars, the purchase money of the Manoa or Imataca mine, and demanded a certificate of sale. The court declared well and duly performed the payment of the purchase money and ordered that the proper certificate be issued to Lockwood, and that he be given, in virtue of his title, the actual possession of said mine. The power of attorney executed by Lockwood to Hammer states that the purchase of the mine was made by him in the name of and representing the Orinoco Company (Limited), and that in consequence the title of the property must be made out in favor of said company, to which corporation the rights exclusively belonged by virtue of the purchase made by him.

In its memorial the Orinoco Company (Limited) alleges that it adopted this course with the object of quieting its title to the "Imataca" iron mine as against the claims of George Turnbull.

On November 29, 1898, Benoni Lockwood, jr., in consideration of the sum of $23,026, to him paid by the Orinoco Company (Limited), conveyed to the said company all his rights, title, and interest in and to the "Imataca" iron mine, meaning and intending to convey all his rights, title, and interest in and to the premises purchased by him at a judicial sale at Ciudad Bolívar on the 18th day of November, 1898.

Mr. Turnbull protested against the judicial sale under the execution issued from the national court of hacienda at Ciudad Bolívar, and on November 21, 1898, filed a petition in the second hall of the high Federal court at Caracas that the proceedings relative to the case in the said court of hacienda be remitted to the second hall of the high Federal court for review; and, therefore, the latter court on February 21, 1899, held that Turnbull had proven by authentic documents which he had exhibited and which were in the expediente that he was the legitimate owner of the mine referred to, and that the said court declared without force the auction sale carried out with reference to the iron mine "Imataca," and that said mine was affected by said rule. But afterwards, upon appeal to the third hall of the high Federal court, the foregoing judgment of the hall of second instance was, on May 6, 1899, reversed, and declared to be revoked "en todos sus partes" (in all its parts).

In the month of May, 1899, George Turnbull brought an action in the court of first instance of the Federal District, civil division, against Benoni Lockwood, jr., the Orinoco Iron Company, and Gen. Joaquín Berrio for damages resulting from the condemnation proceedings and sale at Ciudad Bolívar, alleging that the English syndicate—the Orinoco Iron Syndicate—had had no right whatever in the Imataca mine, and that therefore the execution against said mine was illegal and the sale thereunder void. Benoni Lockwood, jr., having declared before the court at Ciudad Bolívar that he was acting on behalf of the Orinoco Company (Limited) Turnbull afterwards joined said company in the action, in order, as the court states, "that it should be declared that said company had no right of action against him nor claim over his mine Imataca by virtue of the so-called auction sale which took place at Ciudad Bolívar before the national judge of hacienda since the English syndicate had no rights." On jurisdictional grounds the claims against Berrio were withdrawn. The cause then proceeded, counsel for the remaining defendants answering in obedience to the directions of the court, but not in any respect accepting the jurisdiction and the validity of the proceedings.

The court then sustained its jurisdiction against Lockwood and the American company and entered judgment as follows: On the claim for damages that the proof for Turnbull was insufficient, and judgment was accordingly entered for Benoni Lockwood, jr., and the corporation sued; and as to the second part of the action, the court held that as George Turnbull has, with the documents registered in the suboffice of the Federal District and dated the 14th and 19th of March, 1888, issued by the President of the Republic, proved his ownership of an iron mine situated at Manoa, in the State of Guayana, and also his ownership of 500 hectares of unreclaimed lands which form the superficies of the iron mine denominated Imataca, and by the resolution of the 20th of November, 1896, that the said lands and mine constitute a property, legally acquired by Turnbull, apart from the Manoa concession which had been declared forfeited; and as the Orinoco Company (Limited) opposed this title by a title given by an auction on the 18th of November, 1898, before the judge of hacienda of Ciudad Bolívar, which auction took place in virtue of an execution against the Orinoco Iron Syndicate (Limited) an English syndicate, and as in this respect the court was of opinion that the said title is not sufficient to lessen the rights and privileges which Turnbull has as proprietor in

the said mine, because in the first place it did not appear that Turnbull intended to grant his property or any part thereof to any company, and much less was it proved before the judge and auctioneer that the Orinoco Iron Syndicate (Limited) had rights over the mine now in dispute, because for that purpose it would first have been necessary to have sought for the title from which the existence of those rights was derived in order to make the auction sale feasible, and to furnish the purchaser such knowledge of what he was buying; that in the presence therefore of the title shown by plaintiff and that set in opposition by the American company the court declared that it must maintain George Turnbull in the rights and privileges granted by law to legal owners and give judgment against the Orinoco Company (Limited) holding that said company had no rights of action against Turnbull and no rights to enforce on his mine, Imataca, by reason of the title herein referred to.

The foregoing judgment was rendered in the hall of the tribunal of the first instance, civil division of the Federal District, in Caracas, on June 7, 1900. On July 27, 1900, in the magistrate's court of Ciudad Bolívar, it was decreed:

That having considered the application of the judge of the district of Dalla Costa, dated the 20th instant, in which, as the executing officer of a judgment of the civil division of the court of first instance, he asks the assistance of armed forces to enable him to execute the said judgment, by the reason of the resistance on the part of parties required and condemned to deliver possession of the Imataca mines, situated in the jurisdiction of Della Costa, and also considering the representation of Mr. Juan Padrón Uztáriz, as the attorney of George Turnbull, in whose behalf the delivery of said property is to be made under said judgment, this civil and military court, in conformity with the legal prescriptions in the matter of civil authorities aiding the judicial, as is proper in this case, doth order that there shall be placed at the disposal of said judge of the district of Della Costa, 20 armed men under the command of Colonel Uscategui, belonging to the military force of this place, in the name of the State, to enforce said judgment.

Accordingly, on August 4, 1900, proceedings were taken as set forth in the following certificates:

Juan E. Pino, acting secretary of the judge of the district in commission, certifies that pursuant to the measures adopted by the mandate of execution, given on the 19th day of June, 1900, by the judge of the civil court of the first instance in the Federal District, there is found an act as follows: In the Manoa region of the Della Costa district, on the 4th of August, 1900, there was constituted a judge of the said district at the iron mine of Imataca, on the side of the mountain, in which location is found the principal location of said mine. And in view of the objection made by the representatives of the Orinoco Company (Limited) to the transfer of the effects belonging to George Turnbull, then proceeded to comply with the mandate and execution given on the 19th of June, 1900, by the judge of the court of first instance in the civil court of the Federal District, by taking formal possession of said mine and all its appurtenances in the presence of the witnesses José María Escobar and Augosto Parejo Gaines. The court being held at the above-mentioned place, the above-mentioned judge solemnly declared, in the name of the Republic and by the authority of the law, that George Turnbull, represented by Juan Padrón Uztáriz, is placed in possession of the immovables, consisting of 400 hectares to the north of the Corosimo River and 100 hectares to the south of the same river, conforming to the title of the said property given the 14th of March, 1888, and reaffirmed the 20th of November, 1896. Having accomplished which, the court was afterwards transferred to the banks of the Corosimo River, where were found the buildings and other appurtenances of the above-mentioned mining establishment, and it was again declared, equally in the name of the Republic and by authority of the law, that the owner, George Turnbull, is placed in possession of the following property: The railroad line that goes to the mine, its rolling stock and other appurtenances; a large house and two small living houses; two sheds covered with zinc; two small houses covered with zinc; a house and six sheds of straw for laborers, and about 3,500 tons of iron ore situated at the above-mentioned river and taken out of the mine. There presented

themselves H. H. Verge and P. Mattei manifesting, the first in his character as superintendent of the Orinoco Company (Limited), and the second authorized by George B. Boynton, who protested in the most solemn manner against the above-mentioned acts, and in consequence made a written protest, in accordance with the above action. Furthermore, the court imposed on all those present the obligation that they are to respect all acts legally done and to abstain and avoid any act that might impede or interfere with the owner, George Turnbull, or his representative, in exercising the rights that they are entitled to.

In a communication addressed to the Secretary of State of the United States, dated December 18, 1900, G. E. Hinnau, "of counsel for George Turnbull," states that the court of first instance in the Federal District at Caracas, being a duly constituted court of competent jurisdiction, had, on June 9, 1900, finally and conclusively adjudicated and by decree confirmed the tenor of the resolution of the Government of Venezuela, finding, as in said resolution recited, that the title to the Imataca mines was vested in said Turnbull, and that no other person had or possessed any right, title, or interest therein, and having no such title, any possession adverse to said ownership was unlawful; and that from such findings and a mandate and decree thereon made by said court, dated the 19th day of June, 1900, there is no appeal; that pursuant to the adjudication and mandate of said court, and in the enforcement and effectuation thereof, the proper authorities on the 4th day of August, 1900, placed said Turnbull, through his agent, Juan Padrón Uztáriz, in possession of the property and its appurtenances; and that the court, for the purpose of thereinafter maintaining Turnbull in the lawful maintenance of such property, ordered and decreed by perpetual injunction that all persons be thereafter enjoined and restrained from impeding or interfering with the rights of said Turnbull in and to said mines and property.

It is, however, to be observed that the judgment of the civil division of the court of first instance of the Federal District is res adjudicata solely upon the issue properly before it for its determination; that the Orinoco Company (Limited) was a party to the proceedings in said court only in its capacity as grantee of the rights and interests, if any, obtained by Benoni Lockwood, jr., by virtue of the judicial sale at Ciudad Bolívar on November 18, 1898, under the execution against the Orinoco Iron Syndicate (Limited); that the judgment of the court was that "in the presence of the title shown by plaintiff (Turnbull), *and that set in opposition by the American company* (to wit, as the record shows 'a title given by an auction on the 18th of November, 1898, before the judge of hacienda of Ciudad Bolívar'), the tribunal must maintain George Turnbull in the rights and privileges granted by law to legal owners," and that "the company has no rights of action against him (Turnbull), and no rights to enforce on his mine, Imataca, *by reason of the title herein referred to.*" In other words, the court held that the Turnbull titles of March, 1888, were to be sustained in opposition to the title obtained by Benoni Lockwood, jr., in virtue of the judicial sale, declared invalid, of November 18, 1898.

It is evident from the record that the prior valid and subsisting rights of the Orinoco Company (Limited) as cessionary of the Fitzgerald contract of September 22, 1883, were not before the civil division of the court of first instance of the Federal District in the case of *George Turnbull* v. *Benoni Lockwood, jr., et al.*, and therefore that they are in no manner affected or determined by the judgment of said court in that action. Rulings of courts must be considered always in

reference to the subject-matter in litigation and the attitude of the parties in relation to the point under discussion.

Moreover, as has been shown heretofore, jurisdiction of the Fitzgerald contract vested, constitutionally, in the high Federal court alone.

On the 10th of October, 1900, it was, through the ministry of fomento, resolved:

Considering that the contract celebrated September 22, 1883, with Cyrenius C. Fitzgerald, and on which the Orinoco Company (Limited) now bases its right for the exploitation of the national riches in the Delta of the Orinoco and colonization of the lands conceded, has now no legal existence, for that it was declared void for failure of performance of what was in it stipulated; that in April, 1887, the National Congress approved a contract celebrated with the North American citizen, George Turnbull, in the same regions and with the same clauses and in all equal with that with the Manoa Company (Limited) (cessionary of Fitzgerald), declared void, which was also for the same causes declared in caducity on the 18th of June, 1895; and that on the same day of the said month and year this office issued an executive resolution restoring to the Manoa Company (Limited) the rights and privileges conceded by the original contract with Fitzgerald in 1883; and

Considering (first) the contract celebrated with C. C. Fitzgerald having been declared void for failure of compliance with article 5, this can not be considered in vigor without the intervention of a new contract approved by the National Congress; (second) that the legislature of the State of Bolívar, in its ordinary session in 1899, adopted a joint memorial to the National Congress, declaring that the company concessionary of the contract celebrated with Fitzgerald had not complied in its fourteen years of existence with any of the clauses established in article 5 of the said contract, and that this interferes with the interests of the Venezuelans for exploiting the natural products of that region of the Republic, and (third) that according to the notes and reports forwarded to this office by the authorities of the different places of the region to which refers the concession already mentioned, all concur in the failure of performance of the same and of the palpable evil which it occasions, as well to the national treasury as to the individual industries, the supreme chief of the Republic has seen fit to dispose:

That the mentioned contracts are declared insubsistent.

Let it be communicated and published.

For the National Executive:

RAMÓN AYALA.

The evidence presented here discloses that in the joint memorial adopted by the legislative assembly of the State of Bolívar, it was by that body resolved:

ARTICLE 1. To solicit the National Congress to order the necessary dispositions to the end that shall be petitioned by the competent organ, and shall be declared by the high Federal court the rescission of the contract celebrated by the National Executive with the citizen, Cyrenius C. Fitzgerald, his associates, assigns, and successors, the 22d of September, 1883, which was approved by the Congress in session the 23d of May, 1884.

It is furthermore significant that in the National Congress on April 7, 1899, the special commission appointed to consider and report concerning the resolution of the legislative assembly of the State of Bolívar with reference to the Fitzgerald contract, reported to the citizen president of the chamber of deputies proposing to the chamber that it remit said resolution to the National Executive, in order that it resolve what is convenient, but that on April 26, 1899, when the chamber of deputies considered in session the foregoing report, the deputy, Doctor Martinez, proposed—

That at the end of said report, where it says, "in order that it resolve what is convenient," it shall say: "*In order that they be submitted to the high Federal court, to the end that that tribunal shall resolve the affair in conformity with justice.*"

And this proposition was voted approved.

Clearer and more conclusive evidence (except the constitutional provision itself) could not be required than the foregoing action of the chamber of deputies on April 26, 1899, and the decision of the high Federal court in the New York and Bermudez case hereinbefore cited, to demonstrate that jurisdiction of the Fitzgerald contract vested solely in the high Federal court, and that such executive resolutions as those of September 9, 1886, and of October 10, 1900, declaring said contract insubsistent are illegal assumptions of power and null and void.

The question whether or not the grantees of the Fitzgerald concession had fulfilled its conditions was remitted by the agreement itself to the competent tribunals of the Republic, to be there determined in conformity with the laws. But it may be remarked that the evidence shows that various high officials of Venezuela, including the governor of the Federal territory of the Delta, certify that within the time limit of the contract the concessionaries had commenced the work of exploitation "in conformity with what is established in the contract." When the Government on June 18, 1895, authorized the Manoa Company (Limited) to renew its work of exploitation and colonization the reports made by the company to the Government presented in evidence show that the company actively resumed the prosecution of the enterprise. Furthermore, it is to be observed that complaints of nonfulfillment of the Fitzgerald contract come with small grace from the Government of Venezuela. Evidence is not wanting here that shortly after the signing of the alleged contract between Guzmán Blanco and George Turnbull in Europe the Government of Venezuela ordered the governor of the Federal territory of Delta to require the Manoa Company (Limited) to suspend its operations. The hostile, arbitrary, and vacillating course of the Government toward the grantees of the Fitzgerald concession from the illegal annulment of their contract on September 9, 1886, to the equally illegal annulment on October 10, 1900, was calculated to paralyze every effort to fulfill their obligations, destroy their credit, create expensive litigation, and involve in financial ruin every person induced to invest his capital in the company's enterprises in reliance upon the good faith of the Venezuelan Government. Enterprises of pith and moment require for their successful prosecution and depend upon the stability of rights the protection of law, the sacredness of obligations, and the inviolability of contracts. Of all these elements necessary to success the grantees of the Fitzgerald contract were deprived by the arbitrary acts of the Venezuelan Government, which in equity and justice can not now be heard to complain that the said grantees did not, in the presence of such obstacles and in opposition to the unlawful exercise of superior force, fulfill their obligations.

The twelfth article of the collusive Guzmán Blanco-Turnbull contract of January 1, 1886, shows that George Turnbull had full knowledge of the exclusive rights and privileges possessed by the grantees of the Fitzgerald concession within the territories described. With this knowledge Mr. Turnbull's efforts then and thereafter were persistently directed toward the dispossession of said grantees from the rights lawfully vesting in them by virtue of that contract. His status throughout the history of this remarkable case has been that of a mere stranger and trespasser seeking to divest the prior lawful and subsisting titles vesting by and through the Fitzgerald concession.

And it is a common maxim that he who has the precedency in time has the advantage in right; not that time, considered barely in itself, can make any such difference, but because the whole power over a thing being secured to one person, this bars all others from obtaining a title to it afterwards. (1 Fonbl. Eq., 320.)

The basis of Mr. Turnbull's claim against the Government of Venezuela presented to this Commission is the alleged interference with and deprivation of the titles obtained by him in 1888 to certain lands and mines. But these titles were knowingly sought and secured by him in derogation of the rights of the grantees of the Fitzgerald concession. His titles were void and his possession unlawful ab initio.

Mr. Turnbull complains of the Venezuelan Government:

First. That by reason of certain acts of said Government he was prevented from either improving or selling his said property, and that he thereby sustained a loss of upward of $50,000.

Second. That by reason of certain other acts of the Venezuelan Government he was deprived of the consideration agreed to be paid him under his contract of the Orinoco Iron Syndicate for the lease of said property, and was unable to make any other contracts with respect thereto, or to develop or take the products of said mines, and was thereby damaged to the extent of £140,000.

Third. That by reason of certain acts of the Venezuelan Government he was deprived of the use and occupation of said property, and prevented from concluding any contracts, or to use, develop, lease, or sell said property, or the minerals or product thereof, from November 20, 1896, to June 8, 1900, and was thereby damaged in the sum of $500,000.

Fourth. That between the years 1893 and 1900 he expended and caused to be expended the sum of $120,000 in the United States and England in travel, legal disbursements, fees to the Government of Venezuela, legal expenses of negotiating, promoting, and procuring six several contracts for the leasing, testing, and sale of said property, all of which contracts were made ineffectual and void by reason of the spoliation of titles to said property by said Government and the withholding of the use, possession and occupation thereof.

The Manoa Company (Limited) in its memorial alleges respecting the damages and injuries caused said company by the acts of the Government of Venezuela:

First. That if by reason of the force and effect of the resolutions of September 9 and September 10, 1886, and the act of Congress of April 28, 1887, or of any or either of them, said company was divested of its rights, titles, and interests in and to the Fitzgerald concession, it was damaged thereby in the sum of $5,000,000.

Second. But that if the said resolutions and act did not have that effect, it was, by their consequences, prevented from the development and exploitation of the resources thereof, and the receipts of the rents, revenues, royalties, and profits which it would have derived therefrom between the date thereof when its rights thereto had been repudiated by the Government, and the date of the resolution of June 18, 1895, when its said rights were confirmed, reaffirmed, ratified, acknowledged, and reestablished; which rents, revenues, royalties, and profits said company estimates, in view of all the then existing conditions and circumstances of the case, would have amounted to the sum of $300,000.

Third. That if the resolution of July 10, 1895, by its force and effect devested said company of its right, title, and interest in or to the

mine of asphalt, it was damaged in the sum of $250,000; but that if it did not have that effect or operation then the said company was damaged thereby in the nominal sum of $1,000.

Fourth. That by the effect thereof as a slander of its title to the entire concession and each and every part of it, by the assertion immanent in that resolution and an obvious implication from it that the title and rights of the said company to its entire concession were liable at any time to be arbitrarily and summarily devested and annulled in like manner, either totally or in fragments, at the discretion or caprice of the Executive authority and without due process of law, it was damaged in the sum of $2,000,000.

Fifth. That if the resolution of November 20, 1896, by its force and effect divested said company of its rights, title, and interest in or to the mine of Imataca and its appurtenant lands, it was damaged thereby in the sum of $1,000,000; but that if it did not have that effect, then said company was damaged thereby in the nominal sum of $1,000.

The Orinoco Company (Limited) complain of the Government of Venezuela:

First. That on account of the acts and doings of said Government and its officers touching the sale under execution issued from the national court of hacienda at Ciudad Bolívar, and for the damages caused by it and them to said company by the deprivation of said company of its lawful possession of the mine of Imataca under the claim that the Government had a lien thereon in consequence of the judgment in said court against the Orinoco Iron Syndicate; and by the exaction and appropriation of the purchase price thereof and the costs, expenses, and disbursements caused thereby, and the ejectment from and deprivation of said mine, that said company was damaged in the sum of $125,000.

Second. That by reason of the Executive resolution of the 10th of October, 1900, declaring insubsistent the contract of September 22, 1883, the company lost the profits of a certain contract entered into by it with Charles Richardson and his associates for the lease of the asphalt mine on the island of Pedernales, and was thereby damaged in the sum of $100,000.

Third. That by reason of said resolution the company lost the opportunity of completing an agreement with Messrs. Moore, Schley & Co. for the exploitation of the Imataca iron mine, and was damaged thereby in the sum of $100,000.

Fourth. That the company on the 10th day of October, 1900, had concluded negotiations with Messrs. Power, Jewell & Duffy, of Boston, whereby it was stipulated that for a certain consideration the said parties should pay into the treasury of said company as and for a working capital with which to prosecute its intended operations on the concession the sum of $2,800,000, but that by reason of the Executive resolution of October 10, 1900, the said parties refused to execute the proposed contract and abandoned the same, whereby the company lost the benefit and advantage thereof and was damaged in that sum.

Fifth. That, if under the constitution and laws of the Republic of Venezuela, the resolution of October 10, 1900, had the effect to devest said company of its rights, titles, and interests in and to the contract of September 22, 1883, the company was damaged in the sum of $10,000,000; and if it be otherwise and said resolution was an act of usurped authority beyond the competence of the Executive power, then the company was damaged thereby in the aggregate of the

damages mentioned as having been occasioned thereby; but that the company advisedly limits its claim against the Republic of Venezuela for the damages occasioned by said resolution of October 10, 1900, to the sum of $1,000,000, for which it demands the judgment and award of this tribunal.

Sixth. That if it be considered that by force of the constitution and laws of Venezuela the Orinoco Company (Limited) has been devested of its rights, titles, and interest in and to certain land and mining concessions granted by the Government since the date of the resolution of October 10, 1900, the company makes claim on that account for the reasonable value thereof which it alleges upon information and belief exceeds the sum of $1,000,000; but if it be considered that the said land and mining concessions are of no force or validity as against the elder patent and paramount title of said company under its contract, then the company claims only nominal damages for and on account of the granting of the same in manner and firm but without legal effect upon the right of said company to have and exploit the same.

In view of all the foregoing I am of the opinion:

First. That the contract-concession entered into on the 22d day of September, 1883, by and between the Government of Venezuela and Cyrenius C. Fitzgerald, granting to the said Fitzgerald, his associates, assigns, and successors for the term of ninety-nine years the exclusive right to develop the resources of certain territories therein described, and the exclusive right of establishing a colony for the purpose of developing the resources already known to exist and those not yet developed in the same region, and other rights, privileges, and immunities therein specifically enumerated, is and since the 29th day of May, 1884, has been a valid subsisting contract, lawfully vesting in the grantee Cyrenius C. Fitzgerald, his associates, assigns, and successors all the rights, privileges, and immunities in the said contract set forth.

Second. That George Turnbull obtained no rights of property, either in the concession as a whole, under and by virtue of the alleged contract of January 1, 1886, or to the lands and mines of Pedernales and Imataca, under and by virtue of his alleged titles.

Third. That the Fitzgerald contract-concession being subsistent, the Manoa Company (Limited) is entitled to an award generally for the wrongful interference with and deprivation of the exercise of its rights and privileges under the said contract-concession by the Government of Venezuela from the 9th day of September, 1886, to the 18th day of June, 1895, justly commensurate with the loss or injury sustained thereby; and in particular to an award for damages, however nominal, for injuries sustained relative to the Pedernales asphalt mine and to the iron mine of Imataca.

Fourth. That the Fitzgerald contract-concession being subsistent, the Orinoco Company (Limited) is entitled to an award generally for the wrongful interference with and deprivation of the exercise of its rights and privileges under the said contract-concession by the Government of Venezuela, from the 10th day of October, 1900, to the 14th day of January, 1901, justly commensurate with the loss or injury sustained thereby; and in particular to an award for the amount paid into the national court of hacienda on the 19th day of December, 1898, together with interest on said sum at the rate of 3 per cent per annum from said date to the 31st of December, 1903, the anticipated date of the final award by this Commission.

GRISANTI, *Commissioner* (claim referred to umpire):

"The Manoa Company (Limited)" sets forth a claim against the Republic of Venezuela, the memorial of which ends as follows:

> Your orator claims, however, that by the effect thereof as a slander of its title to the entire concession and each and every part of it, by the assertion immanent in that resolution and an obvious implication therefrom, that the title and rights of the said company to its entire concession was liable at any time to be arbitrarily and summarily devested and annulled in like manner, either totally or in fragments, at the discretion or caprice of the Executive authority and without due process of law; that it was in fact damaged in the sum of $2,000,000 and more; and if said resolution of November 20, A. D. 1896, by its force and effect devested said company of its said right, title, and interest in or to said mine of Imataca and the appurtenant lands aforesaid, that it was damaged thereby in the sum of $1,000,000; but if it did not have that effect or operation, then that said company was damaged thereby in the nominal sum of $1,000.

On September 22, 1883, a contract was celebrated between the Government of Venezuela and Cyrenius C. Fitzgerald, approved by the National Congress on May 23, 1884, whereby was conceded unto said Fitzgerald, his associates, successors, and assigns, for the term of ninety-nine years, the exclusive right to exploit the resources of the territories of national property referred to in Article I of said contract; as also the exclusive right for the same term to establish a colony, to develop the resources known, and also those as yet not exploited in said region, including asphalt and coal; for the purpose of establishing and cultivating on as high a scale as possible agriculture, breeding of cattle, and other industries and manufactures which may be considered suitable, setting up for the purpose machinery for working the raw material, exploiting and developing to the utmost the resources of the colony.

Fitzgerald undertook to commence the works of colonization within six months, counting from the date when said contract was approved by the Federal council (art. 5)—that is to say, from the date of its being granted (September 22, 1883)—the Government having promised that, if in its judgment it should be necessary, it should grant to the contractor a further extension of six months for commencing the said works (art. 10).

On the 7th day of February, 1884, Dr. Heriberto Gordón, acting as Mr. Fitzgerald's attorney, requested that said Mr. Fitzgerald should be conceded the further extension of time referred to in said article 10; and by resolution of the 19th of the same month it was so conceded, to be counted from the 22d of the following March.

In the course of said extension of time—on the 14th of June—Fitzgerald assigned the contract to "the Manoa Company (Limited)," and on April 10, 1886, seven months and ten days after said extension had elapsed, Doctor Gordón, attorney for said company, addressed a petition to the minister of agriculture (fomento), the last part of which (pp. 64, 65, and 66 of the record) is as follows:

> Therefore, in compliance with instructions given me by "the Manoa Company (Limited)," I beg to apply to the Benemérito general, President of the Republic, through your respectable organ, beseeching him most entreatingly and urgently to declare by resolution that to "the Manoa Company (Limited)" are not imputable the circumstances which have prevented it, up to the present, from carrying out works in accordance with the contract celebrated between the Government and C. C. Fitzgerald on September 22, 1883, of which it is an assignee; and that, therefore, said contract is in force, and the company in possession of all its rights, as in the extensions accorded will not be computed the time elapsed up to the present.

Throughout all of said solicitude, and particularly in the above-inserted paragraph, "the Manoa Company (Limited)" confesses through its attorney, Doctor Gordón, that at that date (April 10, 1886), a long time after the extension had expired, it had not commenced to fulfill the contract, and likewise admits considering it annulled. And considering only in fact that the company held such an opinion, can it be accounted for that the company should request the Government to promulgate a resolution declaring *that the causes which had prevented it from carrying out the contract are not imputable to it; that therefore the contract is in force and the company in possession of all its rights, as in the extensions accorded will not be computed the time elapsed.*

The above-mentioned petition was followed on September 9 by this resolution, to wit:

Resolved, Señor Heriberto Gordón, with power from Señor C. C. Fitzgerald, celebrated on the 22d of September, 1883, with the National Government a contract for the exploitation of the riches existing in lands of national property in the Grand Delta, and the works ought to have been begun within six months of the aforesaid date. In spite of such time having elapsed without commencing said works, the Government granted him an extension of time for the purpose; and inasmuch as said contractor has not fulfilled the obligations which he contracted, as stated in the report of the director of territorial riches, specifying in reference to article 5 of the contract in question, the councilor in charge of the presidency of the Republic, having the affirmative vote of the Federal council, declares the insubsistency or annulment of the aforesaid contract.

In any other case the lawfulness of said resolution would be doubtful, but in the present one it is not; firstly, because "the Manoa Company (Limited)" has authentically declared the facts whereon it is based; secondly, because said company tacitly acknowledged the annulment of the contract; and, lastly, because the company itself made the National Government a judge as to the enforcement or termination of the contract, when requesting it to declare the enforcement of said contract, whereby it authorized the Government ipso facto to promulgate its annulment.

As an explanatory argument of the unlawfulness of the above-inserted resolution, quotation is made of the judgment passed by the high Federal court on August 23, 1898, declaring the insubsistency and nullity of the Executive resolution of January 4 of said year, whereby the contract of the "New York and Bermudez Company" was declared terminated and void.

Without discussing said decision, which in our opinion is erroneous, as shown by the reasonings contained in the voto salvado of three of the judges (Official Gazette, No. 7421, dated September 17, 1898), we shall undertake to establish that the case of the "New York and Bermudez Company" and that of "the Manoa Company (Limited)" are entirely different, whereas the claimant company, in the aforementioned petition, authentically confessed the insubsistency of its contract, the forfeiture of its rights, and requested the National Government to ratify the same, which confession and petition the "New York and Bermudez Company" did not make. And the most obvious evidence of the difference between the two cases is that "the Manoa Company (Limited)" did not apply to the high Federal court to request that the resolution of September 9, 1886, be declared void.

"The Manoa Company (Limited)" alleges as the principal cause for preventing it from fulfilling the obligations contracted, the British invasion, for, according to the claimant company's statement, the

British authorities were apt to hinder its use and full power over a considerable portion of the territory marked out in Article I of the contract.

In an article inserted in the Evening Post, New York, dated February 10, 1896, we find the following account:

Mr. Fitzgerald especially attributes the subsequent misfortunes, decadence, and collapse of the Manoa Company solely to the British invasion.

But there are some peculiar facts in this connection. Mr. Fitzgerald, when requested to point out on the map the location of the sawmill, indicated it as above specified. Now, that particular spot is to the westward of the Schomburgk line; and every one familiar with the geographical aspects of British claims in the Guiana controversy knows that they never extended in the interior so far as to approach any part of the course of the Orinoco River.

Moreover, the Anglo-Venezuelan diplomatic correspondence appertaining to McTurk's proceedings of 1884 shows that his assertion of British jurisdiction did not extend farther west than the Amacuro River, i. e., the coast limit of the Schomburgk line. Guzmán Blanco, as Venezuela's plenipotentiary in London, reviewed in a note to Lord Salisbury, dated July 28, 1886, all the circumstances of the McTurk affair, and in it there is no allusion to forcible British acts west of Amacuro. In his communication Guzmán Blanco cites a note written by McTurk, *from the right bank of the Amacuro*, to Mr. Thomas A. Kelly, resident manager of the Manoa Company, *stating that he* (McTurk) *had received notice that the company was going to erect a sawmill at the mouth of the Barima*, and warning him against such encroachment. This seems to establish that the British Government's interference with the Manoa Company in 1884 had in view only the prevention of the company's intended programme for intrusion east of the Schomburgk line, and involved no interference with the sole improvements made by the company up to that on the grant.

Accordingly there was nothing to deter the Manoa corporation from pushing forward its *mercantile, agricultural, commercial, manufacturing, shipping, and mining business* in territory exclusively Venezuelan, with the Orinoco sawmill settlement as a basis. Besides, the really valuable portions of the concession for the purposes of immediate development (including the Pedernales asphalt property) were those which lay to the west of the Schomburgk line, and which could have been worked in absolute security of ownership under the laws of Venezuela.

An affidavit of Mr. Jerome Bradley, ex-president of the Manoa Company (Limited), rendered on October 21, 1886, filed at the United States circuit court in Brooklyn (case of Everett Marshall *v.* The Manoa Company et al.) reads as follows, to wit:

I have read the affidavit of C. C. Fitzgerald, verified July 30, 1887. It is untrue that I was informed by his (Fitzgerald) son George, upon the latter's return from Venezuela, that the lumbering operations upon said grant were discontinued in 1884 owing to the interference of the British Government claiming the territory; but, on the contrary, I allege that the same were discontinued for the reason that the Manoa Company did not pay, and had not the means to pay, the few men employed by them to cut lumber and transport it to the sawmill; that the sawmill spoken of was not upon that portion of said grant to which a claim was made by the British Government. The said sawmill was distant from that portion of the grant over 50 miles. (Taken from an insertion of Mr. Trumbull's appended to this claim.)

This shows that the British invasion is only a pretext alleged by the claimant company so as to conceal the real cause of its collapse, which was its inability to raise funds for commencing the works of colonization and fulfilling the other obligations to which it was bound under the contract. Moreover, the company never protested against the aforementioned resolution (although said company asserts to the contrary) nor applied to the Federal court to demand its annulment. Said company was well aware that on lawful grounds it was at a loss; that the executive act was based on true facts and in conformity with justice.

On January 1, 1886, Gen. Guzmán Blanco, envoy extraordinary and minister plenipotentiary of Venezuela to various courts of Europe,

celebrated a contract on behalf of Venezuela with Mr. George Turnbull the same as that as the Manoa Company (Limited); but said contracts, besides requiring for its legal validity the approval of the President of the Republic with the affirmative vote of the Federal council, as also the sanction of Congress (Article 66, attribution 6 of the constitution of 1881), in article 12 stipulates as follows:

This contract shall enter into vigor in case of the becoming void through failure of compliance within the term fixed for this purpose of the contract celebrated with Mr. Cyrenius C. Fitzgerald the 22d of September, 1883, for the exploitation of the same territory.

The referred to contract was approved by the Federal council on September 10, 1886, and by Congress on April 28, 1887; that is to say, after the Manoa Company's contract became void; therefore the Turnbull contract did not deprive said company of the rights it had forfeited and which the Republic of Venezuela had newly acquired.

On June 18, 1895, and at the request of the Manoa Company (Limited), the National Government issued a resolution, ordering that—

due authorization be given to the said Manoa Company (Limited), within six months, reckoning from the date of this resolution, to renew its works of exploitation in order to the greater development of the natural riches of the territories embraced in said concession; hereby confirming it in all its rights stipulated and granted to C. C. Fitzgerald by the contract of September 22, 1883; and the said Manoa Company (Limited) shall be bound to report to the national Executive from time to time through the organ of this ministry of all and every work done by it in execution of said contract in order that the Government may be enabled to judge of its compliance with the obligations of said contract in conformity with the spirit and the magnitude of its stipulations.

The contract of the Manoa Company (Limited), being insubsistent through it not complying the obligations thereunder, and also in view of the contents of the Executive resolution dated September 10, 1886, could not, in virtue of the Executive resolution already inserted, revive said contract, but had to be issued anew in conformity with the National Constitution of 1893; that is to say, that it had to be celebrated by the President of the Republic with the affirmative vote of the Government council and with the approval of Congress. Article 44 of the constitution which establishes the duties of Congress, contains, under No. 16 the following:

To approve or deny such contracts of national interest as the President of the Union may have celebrated, and without which they can not be carried out into effect.

The Executive resolution of June 18, 1895, was, and is, absolutely inefficacious for giving existence to a contract that had become void ten years before.

The claimant company presents as a proof of the subsistence of its contract a resolution issued by the minister of fomento on February 26, 1886, which in no wise refers to said contract but to another, as I shall forthwith show. Hence the text of the resolution:

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO,
DIRECTION OF TERRITORIAL RICHES,
Caracas, February 26, 1886.

Year twenty-second of the law and twenty-seventh of the federation.

Resolved, In view of the petition of Citizen Heriberto Gordón, as attorney to C. C. Fitzgerald, assignee of the contract for colonization and exploitation of a part of the waste lands of the former State of Guayana, celebrated on May 21, 1884; the President of the Republic, with the vote of the Federal council, has resolved: That for the

effects of the extensions of time fixed for the performance of said contract, the time elapsed since the 11th of June, 1885, up to this day, be not computed, and that consequently the mentioned contract continue in force and the concessionary is in possession of all his rights.

Let it be published.

For the Federal Executive:

J. V. GUEVARA.

This resolution refers to the contract celebrated by Dr. Heriberto Gordón on his own behalf for colonizing the waste lands situated in the former State of Guayana, which are comprised within the limits expressed in Article I.

The Manoa contract was celebrated on September 22, 1883, and approved by the National Congress on May 23, 1884; the Gordón contract was celebrated on May 20, 1884, and its approval by the legislature took place in the 12th of June of the same year.

Owing, no doubt, to a mistake, which I have corrected, the claimant company has adduced the mentioned resolution as evidence.

"The Manoa Company" considers itself as being the owner of the Imataca iron mine and the Pedernales asphalt mine, alleging such ownership in view of article 4 of the contract; and whereas in 1888 the Government of the Republic conceded the definite title to said mines to Mr. George Turnbull, who previously fulfilled the formalities of law in force at the time, said company pretends to be dispossessed and on the ground of such erroneous opinion lays one of its claims.

The memorial states as follows:

Afterwards, on or about the 13th day of March, A. D. 1888, the authorities of the Republic conceded and issued to said Turnbull, in form of law but without right, the definite title to the said iron mine of Imataca; and afterwards, on the 28th day of June of that year, they conceded and issued unto him in like manner and form the definite title to said mine of asphalt; and afterwards put said cesionary in possession thereof and of the lands comprising the superficial area of the same and intended for their use in the exploitation thereof; the definite title of which lands also said authorities about the same time conceded to said Turnbull.

All of said arbitrary acts and doings were accomplished without notice to said company or other process, legal proceeding, or opportunity to them to be heard, and were in manifest derogation of its rights.

The basis which the claimant company pretends to have for the series of mistakes contained in the two foregoing paragraphs is article 4 of the contract, to wit:

ART. IV. A title in conformity with the law shall be granted to the contractor for every mine which may be discovered in the colony.

The claimant company holds that, in virtue of said clause, every mine discovered in the territory described in article 1 of the contract belongs to it, whoever the discoverer may be. A gross absurdity, which baffling interest alone could have led the claimant company to believe. The Government of Venezuela undoubtedly celebrated the contract which is being subject to analysis, with a view to develop the natural riches and colonization of the mentioned territory, and according to the curious meaning given to article 4 by the company, the exploitation of the mines depended exclusively on their will, so that if said company did not wish to discover any, nobody could denounce one, even if he discovered it.

Furthermore, the article provides that a title should be granted in conformity with law to the enterpriser on every mine he discovered; that is to say, that if the company discovered a mine, it had, in order to obtain said title, to comply with the legal formalities.

Since 1883, when the Manoa contract was signed, up to 1887, when Turnbull obtained his title to the iron mine of Imataca and to the asphalt mine of Pedernales, five mining codes were in force in Venezuela, to wit: one of March 13, 1883; one of November 15, 1883; one of May 23, 1885; one of May 30, 1887; and an organic decree of the latter issued on August 3, 1887.

All of said codes are based on the principle that mines are the property of the State wherein they are situated, the administration alone of the same being in charge of the Federal Executive; therefore it has to be taken for granted that whosoever wishes to exploit a mine, even he who discovers the same on his own grounds, must previously obtain a corresponding title thereto. For such obtainment the following formalities, briefly stated, have to be complied with:

Whoever may intend to exploit mines shall notify the president of the State or the governor of the territory wherein the mines discovered are located, so that they may be entered in the register which must be kept by the secretaries of said functionaries. (Art. 11.)

The petition for a concession shall be published once only in the official gazette of the State or territory, as the case may be, or in default thereof in the paper of largest circulation, or if the latter does not exist either, it will suffice to post placards or advertisements in the municipality where the mines are located during thirty days. (Art. 12.)

In every petition for mines addressed to the president of the State or to the governor, accordingly, the number of mines requested must be expressed, as also the district, municipality, or colony wherein such are contained; if these are not private, municipal, or waste lands, the name must be stated of the engineer or public surveyor who is to measure them and make out the plans, which acts will take place after having published a notice to that effect in the press, in order to inform the adjacent neighbors thereof, so that they may assist at said acts. Plans made only by engineers or surveyors having a title, will be considered authentic and will alone produce legal effect in the matter of mensuration and plans contained in the records of mines. (Art. 16.)

Once the mensuration takes place, the record, together with the plans made, is turned over to the mining inspector for him to verify the acts, which in its turn, and in addition to his report, is all forwarded to the ministry of fomento. (Art. 17.) Thereupon, and in view of the record and its merits, the national Executive decides as to whether it will or will not grant the concession. (Art. 19.)

The Manoa Company (Limited) should have complied with all said formalities in order to obtain a title to the aforesaid mines, and it did not do so. The only judicial effect which can be attached to article 4 of the contract is the right of the company to be preferred when in competition with any other discoverer, in conformity with articles 13, 14, and 15 of the referred-to law.

Article 13 provides that—

> Those who think to have a right to oppose others who have petitioned for mining concessions in virtue of the preceding articles, may present their petitions to the president of the state or to the governor of the territory. These petitions will be registered in the same order of their presentation, stating the day and hour thereof, and the only notification to the parties concerned therein will be published in the official gazette three times in the course of a month, or placards and advertisements will be posted as mentioned in the foregoing article.
>
> On the expiration of said thirty days, and the formalities provided in the preceding articles having been fulfilled, the president or governor, as the case may be, will decide with regard to the petitions for concessions, and his resolution will refer also to the merits of oppositions, if such oppositions have been made.

After said decision has been given no oppositions will be admitted, and the favored party or parties will be authorized by the president or governor accordingly, to proceed to the exploration and other preparatory acts required for putting the record in a condition to be considered, and to enable him to issue or deny a title of concession, reporting the same to the national Executive. (Art. 15.)

The provisions quoted are those of the law of November 15, 1885.

If, as before stated, whenever a person discovers a mine in his own territory he must, in order to obtain a title thereto, comply with the formalities provided under the respective law, all the more reason why the claimant company should have complied with the same is that under the contract of September 22, 1883, no other right to the territory designated in article 1 was conceded to it than that of exploiting the natural riches therein contained.

In the opinion of the Venezuelan Commissioner, as the claimant company has no title of ownership of the aforesaid mines nor made any opposition to Turnbull when he attempted to acquire them, the claim of said company in regard to such mines is absolutely groundless.

"The Manoa Company (Limited)," has not shown that it fulfilled the obligations imposed under the contract of September 22, 1883, and consequently it is deprived of any right to claim for losses sustained through the annulment of said contract. In effect, it would be the most flagrant violation of equity—which has to be the basis for the decisions of this tribunal—to acknowledge the rights which a contract concedes to a contractor without considering that said contractor has not fulfilled the obligations he was under, and that these are correlative to said rights.

Lastly, "The Manoa Company (Limited)," raises its claim to the exorbitant amount of $2,000,000 without producing the slightest evidence to prove that the losses alleged amount to that sum. I am firmly convinced that this high tribunal has to be extremely exigent and conscientious in examining and appreciating the evidence produced in support of claims, as otherwise it might inadvertently serve the unbounded avarice of unscrupulous claimants.

GEORGE TURNBULL.

Let us now analyze Mr. Turnbull's claims.

One is for $500,000, at which amount the plaintiff reckons the damages and losses which a judicial proceeding against "the Orinoco Iron Syndicate" caused him.

This part of the claim is perfectly groundless, as the said proceeding was quite legal, and the most decided and efficacious protection was tendered by the Government of Venezuela to Mr. George Turnbull's interests.

At the national court of finance at Ciudad Bolívar a judgment of confiscation was given against the English schooner *New Day*, of which the captain was John W. Baxter, on account of having discharged at Manoa a cargo that had been transshipped at Barbados from the steamers *Java*, *Yucatan*, *West Indian*, and *Spheroide*, and which cargo had been shipped at London and Liverpool by the Orinoco Iron Syndicate (Limited) to the port of Ciudad Bolívar, addressed to that same company, the manager of which was Mr. George Turnbull. And whereas Manoa is not a port authorized for foreign trade, nor had the schooner obtained a permit to discharge goods therein, the fact was denounced at the national court of hacienda, and said court, in the exercise of its legal duties, passed the corresponding judgment thereon.

Said judgment having been finally determined, a sentence was delivered declaring that the schooner *New Day*, together with its boat, tackle, and other appurtenances, were liable to the penalty of confiscation, as also was the cargo discharged at Manoa, in conformity with No. 6, article 1, law 21 of the Code of Hacienda, to wit:

ARTICLE 1. The objects which are liable to the penalty of confiscation are those included in each of the following cases:
First. * * *
Second. * * *
Third. * * *
Fourth. * * *
Fifth. * * *
Sixth. The cargo of any vessel which attempts to load or discharge, or which is found loading or discharging, or which may have loaded or discharged, in ports not equipped therefor, along the coasts, in bays, inlets, rivers, or on desert islands, with permission and authorization of the law in the premises, and the vessel, together with all its tackle and appurtenances, and the canoes, boats, lighters, or other vessels which may be used for the purpose, shall suffer the same penalty.

That same judgment condemned Capt. John W. Baxter to pay *mancomún et in sólidum* with "the Orinoco Iron Syndicate (Limited)," as the owner and shipper of the cargo, the fiscal duties in addition to the double of these duties, etc. Said condemnation is contained in the provisions of No. 3, article 2, of the cited law 21, to wit:

ART. 2. Besides the loss of the merchandise or effects which may have been the subject of the suit brought to declare the confiscation, and the boats and other vessels, wagons, beasts of burden, and lashings, as the case may be, the transgressors shall incur the following penalties:
First. * * *
Second. * * *
Third. In the sixth case the captain of the vessel and the owner of the cargo, together with the loaders or unloaders, shall jointly and severally (*mancomún el in sólidum*) suffer a fine of twice the custom dues, and the captain shall suffer an imprisonment of from six to ten months.

The above quoted sentence was confirmed by the high Federal court in the following terms:

The minutes of the procedure having been analyzed by this department, it is noted: That the evidence clearly shows that the facts denounced by the administrator of the custom-house at Ciudad Bolívar; that all the extremities of law have been correctly complied with; that the sentence has not been applied for; that therein the penalties of law have been enforced; and that the fisc is not prejudiced; wherefore in conformity with paragraph 2, article 34 of the law of confiscation in force, administering justice, authorized thereto by the law, this procedure is approved in all its parts. (Official Gazette, No. 6829, October 2, 1896.)

This sentence effected, and as the value of the ship and cargo did not suffice to cover the penalties imposed, the rights acquired for exploitation of the iron mine of Imataca by "the Orinoco Iron Syndicate (Limited)" were denounced and offered for sale.

Mr. Turnbull, finding his ownership over the Imataca mine endangered in view of the aforesaid sale, applied to the Government, requesting protection of his rights, and it was forthwith and most fully accorded in a resolution issued on December 10, 1898, by the ministry of agriculture, industry, and commerce (the name at that time of the ministry of fomento), with that view, as affirmed by the claimant himself in his memorial.

Said resolution was telegraphed to the judge of hacienda at Ciudad Bolívar, but arrived after the sale of the aforementioned rights of exploitation had taken place. Turnbull appealed to the court against the sale, and the Federal court decided that the appeal was unlawful.

Subsequently, Turnbull sued Messrs. Benoni Lockwood, jr., and the Orinoco Company (Limited) before the primary court of the Federal District for damages and losses through their bidding at the sale of his Imataca mine, and furthermore sued said company for the annulment of the definite title derived from the sale. On June 7, 1900, a sentence was passed on this case, declaring that "the Orinoco Company (Limited) had nothing to claim against him (Turnbull), nor had it any rights to claim on his Imataca mine with regard to the title already mentioned."

The reasons assigned and the documents quoted prove most evidently that Mr. George Turnbull has no right whatever to demand anything of the Government of Venezuela on account of the claim analyzed. On the contrary, the Government of the Republic always readily sought to protect Mr. Turnbull's interests. In order that this claim might be partially legal, it would have been necessary that the claimant had acknowledged that the sentence passed on the Orinoco Iron Syndicate (Limited) by the national court of hacienda at Ciudad Bolívar, and confirmed by the high Federal court, was notoriously unjust or was a denial of justice; this Mr. Turnbull has not even attempted to do, and if he had, it would have been impossible for him to prove it, as said sentence is entirely in conformity with Venezuelan laws.

Mr. George Turnbull alleges that his having been deprived of the Imataca mine since the annulment of his contract (resolution of June 18, 1895) until his said Imataca mine was excluded from such annulment (resolution of November 10, 1895), impeded him from celebrating any contract and from developing and receiving the benefits of the mines, and that thereby he lost £140,000.

Turnbull ascribes the aforesaid loss to the fact that "the Orinoco Iron Syndicate (Limited)" rescinded its contract celebrated with him for exploiting the Imataca mine. This assertion is denied by the authentic facts which were related while analyzing those alleged as the grounds for the former claim. In fact, it is evident that the above-mentioned syndicate did not rescind its contract on account of the reasons assigned, but that it dispatched the schooner *New Day* to Manoa with machinery and other articles necessary for making assays for the exploitation of the Imataca mine, but, as said ship was found to be discharging its cargo at a port not authorized for foreign trade, the corresponding lawsuit was brought against it, and the final sentence thereof declared that the ship and cargo, together with its tackle and appurtenances, had incurred the penalty of confiscation; all having been complied with in conformity with Venezuelan law. According to Turnbull himself, his affairs with said syndicate were rescinded, owing to the referred to calamity. If such a calamity occurred through Turnbull's fault he ought to take upon himself the injurious consequences thereof; if the same occurred through the syndicate's fault, it had no right to rescind the contract, and Turnbull could demand of it payment for damages and losses. In consequence thereof the claim under analysis is deprived of all legal grounds.

There is another general feature common to all of Mr. Turnbull's claims, and that is the want of evidence in regard to the damages he pretends to have suffered, and which he reckons at really fabulous amounts. With regard to the detention of three of his ships during one month, effected by a Government official, he does not even mention his name, and the claimant affirms that as soon as the Government

heard of this, they replaced the said employee and put the ships at liberty, which means that the Government tendered their protection to Mr. Turnbull's interests. And as regards the stealing and destruction effected in 1893, of the tools and machinery placed at the mines by the claimant, he himself declares that such injurious acts were committed "*by certain individuals who were revolting against the Government*," which shows that such acts were an infringement of common law, and that Turnbull should have applied to the courts of justice to denounce or report the perpetrators thereof and demand of them lawful civil atonement.

THE ORINOCO COMPANY (LIMITED).

This company claims to be paid $125,000 for damages alleged to have been caused through its having bought the Imataca mine, at a judicial sale before the court of hacienda at Ciudad Bolívar, and through the court of common pleas of the Federal District having declared in a sentence issued on June 7, 1900, that the mine belonged to Turnbull.

When analyzing the claims of said Turnbull, we minutely stated everything relative to the confiscation suit brought against "the Orinoco Iron Syndicate (Limited)" before the national court of hacienda at Ciudad Bolívar, and we fully showed the lawfulness of said tribunal's proceedings, for which reason we shall briefly demonstrate the entire want of grounds for this claim.

This want of grounds for the claim and its wrongfulness are evidenced in the memorial itself, which, on the other hand, shows, besides, the negligence and unskillfulness wherewith the company and its representatives carried on the whole affair. The fact is that in said memorial it is admitted that Mr. Benoni Lockwood, jr., took no care to ascertain, before becoming a purchaser, what rights were about to be sold, or whether such rights actually belonged to the Orinoco Iron Syndicate (Limited), against whom said action was brought, and said gentlemen thought, without reading the respective titles, that "said syndicate was assignee of all of the rights which had been claimed by said Turnbull to said premises, and being assured and advised by said Berrio, and supposing and believing that said sentence was a lien upon, and that the purchaser of said premises at said sale would therefore acquire, all the rights of said Turnbull or said syndicate to the possession, development, or exploitation of said mine, and the title of 'the Orinoco Company (Limited)' thereto be effectually and finally quieted as against the same, etc.," he became a purchaser thereof. All of which evidently proves that Lockwood fell into a series of deplorable mistakes, and "the Orinoco Company (Limited)" holds the inconceivable absurdity that Venezuela must indemnify it for the injurious consequences thereof.

Mr. Baxter, the direct representative of "the Orinoco Company (Limited)," did not share in Mr. Lockwood's mistakes, as having powerful reasons to doubt that "the Orinoco Iron Syndicate (Limited)" was the owner of the mine, and in doubt also as to whether said sale were legal he refused to deliver to Lockwood the 120,000 bolivars, which was the price of the sale, and did not effect said payment until much later, having done so in virtue of an agreement which the claimant

says he made with Gen. Celis Plaza and General Berrio, etc. We repeat that, in the fourth paragraph of the memorial, destined to expound and support this claim, its insubsistency is shown.

The high Federal court in its last sentence pronounced the unlawfulness of the recourse to appeal against said sale which Turnbull had pretended, and then said Turnbull brought an action against Benoni Lockwood, jr., and "the Orinoco Company (Limited)," in which case a definite sentence was passed on June 7, 1900, its dispositive part being as follows, to wit:

For the above reasons the tribunal administering justice in the name of the Republic declares groundless the part of the action brought for injury and damages by George Turnbull against Benoni Lockwood, jr., American citizen, resident in New York, and "the Orinoco Company (Limited)," an American corporation organized in conformity with the laws of the State of Wisconsin, as is shown by the power produced, and of effect the other part in which the said Turnbull asks that it be declared that "the Orinoco Iron Company" has no right of action against him, and has no rights to enforce on his mine Imataca. No special order is made as to costs.

No claim arising from said sentence is just, except to prove that the same is notoriously unjust; furthermore, "the Orinoco Company (Limited)" was satisfied with said decision, since it did not attempt the recourse to appeal against it, which is granted under article 185 of the code of civil procedure, and which provides as follows, to wit: "*On* all definite sentences issued in first instance appeal is given, except when special disposition is made to the contrary."

And lastly, the real purchaser is Mr. Benoni Lockwood, jr., and not "the Orinoco Company (Limited);" whereas if by said sale the company sustained damages whatever, it ought to claim compensation of the former, and not of the Government of Venezuela.

It is extremely surprising that the sale having been for 120,000 bolivars, the company should inconsiderately raise this claim to $125,000.

It has most clearly been shown that the claim analyzed entirely lacks grounds, and therefore must be disallowed.

The second claim of "the Orinoco Company (Limited)" is supposed to arise from the executive resolution issued on October 11, 1900, whereby the nullity and insubsistency of the Fitzgerald contract of September 22, 1883, was declared.

"The Orinoco Company (Limited)" sets forth this claim as assignee and successor of the "Manoa Company (Limited)" in regard to the Fitzgerald contract. From a judicial point of view the position of both companies is identical, and consequently the reasons which I exposed on analyzing said contract suffice for rejecting, as I absolutely do reject, this claim.

I therein proved that the resolution of September 9, 1886, is quite legal:

First, because the "Manoa Company (Limited)" confessed authentically the facts which are the grounds thereof; secondly, because the company itself acknowledged the forfeiture of the contract; and, lastly, because it made of the Government a judge as to the subsistency of said contract, which, having been annulled, could not revive through a resolution, but was essentially necessary that it should be issued anew, fulfilling all the requisites and formalities wherewith it was originally issued.

REMARKS IN REFERENCE TO "THE MANOA COMPANY (LIMITED)" AND TO "THE ORINOCO COMPANY (LIMITED)."

The Venezuelan Commissioner can not accept the alternative and doubtful form in which the aforementioned companies set forth some of their claims.

"The Manoa Company (Limited)" states, that if by reason of the force and effect of said resolution of September 9, 1886, the Fitzgerald concession was annulled the company estimates the damages sustained at a certain amount; but that if said resolution did not attain legal efficiency, then the compensation demanded amounts to a different sum. And in the same way it sets forth its claims for the Imataca and Pedernales mines.

"The Orinoco Company (Limited)" adheres to the same alternative form in setting forth its claims regarding the contract and aforesaid mines.

Such a form is inadmissible according to the spirit and meaning of the protocol; in the first place, because every claimant must set forth his claims in categorical and not in doubtful terms, as the Commission entirely lacks jurisdiction to decide as to the validity or nullity of a contract and of titles of ownership, and because it has been organized to entertain claims of United States citizens for obtaining indemnification for damages and losses caused by acts of the Government, or of Government officials; wherefore, whenever this Commission examines the lawfulness or unlawfulness of a resolution of the Government from which a claim derives, it is with a sole view of awarding an indemnification in case of said resolution being unlawful, and of denying it if it is lawful; but this Commission entirely lacks jurisdiction for declaring a resolution inefficacious and making its effects void.

The Government of Venezuela in organizing the mixed commissions appointed judges, and not authorities capable of annulling its acts.

For the same powerful reasons the writer does not admit the arguments of the honorable commissioner on the part of the United States, Mr. Bainbridge, especially those affirming the existence of the Fitzgerald contract and those denying validity to the titles of ownership of the Imataca and Pedernales mines issued by the Government of Venezuela.

In virtue of the reasons stated, the opinion of the Venezuelan Commissioner is that the claims marked Nos. 45, 46, and 47 set forth by George Turnbull, "the Manoa Company (Limited)," and "the Orinoco Company (Limited)," respectively, must be absolutely disallowed.

BARGE, *Umpire:*

A difference of opinion arising about these three claims between the Commissioners of the United States of North America and the United ates of Venezuela, they have duly referred to the umpire, and as ey all have the same origin and follow the same order of facts the npire thought it well to consider them jointly, and having fully ken in consideration the protocol, and also the documents, evidence, d arguments, and likewise all the other communications made by the rties, and having impartially and carefully examined the same, has rived at the decision embodied in the present award.

Whereas in the month of September, 1883, the Government of Venezuela entered into a contract with Cyrenius C. Fitzgerald for the exploitation of the natural products of a certain extent of territory, which contract reads as follows:

The minister of fomento of the United States of Venezuela, duly authorized by the President of the Republic, of the one part, and Cyrenius C. Fitzgerald, resident of the Federal Territory of Yuruary, of the other part, have concluded the following contract:

ARTICLE I. The Government of the Republic concedes to Fitzgerald, his associates, assigns and successors, for the term of ninety-nine years, reckoning from the date of this contract, the exclusive right to develop the resources of those territories, being national property, which are hereinafter described.

1. The island of Pedernales, situated to the south of the Gulf of Paria and formed by the gulf and the Pedernales and Quinina streams.

2. The territory from the mouth of the Araguao, the shore of the Atlantic Ocean, the waters above the Greater Araguao, to where it is joined by the Araguaito stream; from this point, following the Araguaito to the Orinoco, and thence the waters of the upper Orinoco, surrounding the island of Tortola, which will form part of the territory conceded, to the junction of the José stream with the Piacoa; from this point following the waters of the José stream to its source; thence in a straight line to the summit of the Imataca range; from this summit following the sinuosities and more elevated summits of the ridge of Imataca to the limit of British Guayana; from this limit and along it toward the north to the shore of the Atlantic Ocean to the mouth of the Araguao, including the island of this name and the others intermediate or situated in the delta of the Orinoco and in contiguity with the shore of the said ocean. Moreover, and for an equal term, the exclusive right of establishing a colony for the purpose of developing the resources already known to exist and those not yet developed of the same region, including asphalt and coal; for the purpose of establishing and cultivating on as high a scale as possible agriculture, breeding of cattle, and all other industries and manufactures which may be considered suitable, setting up for the purpose machinery for working the raw material, exploiting and developing to the utmost the resources of the colony.

ART. II. The Government of the Republic grant to the contractor, assigns, and successors, for the term expressed in the preceding article, the right of introduction of houses of iron or wood, with all their accessories, and of tools and of other utensils, chemical ingredients and productions which the necessities of the colony may require; the use of machinery, the cultivation of industries, and the organization and development of those undertakings which may be formed, either by individuals or by companies, which are accessory to or depending directly on the contractor or colinization company; the exportation of all the products, natural and industrial, of the colony; free navigation, exempt from all national or local taxes, of rivers, streams, lakes, and lagoons comprised in the concession or which are naturally connected with it; moreover the right of navigating the Orinoco, its tributaries and streams, in sailing vessels or steamships, for the transportation of seeds to the colony for the purpose of agriculture, and cattle and other animals for the purpose of food and of development of breeding; and lastly, free traffic of the Orinoco, its streams and tributaries, for the vessels of the colony entering it and proceeding from abroad, and for those vessels which, either in ballast or laden, may cruise from one point of the colony to the other.

ART. III. The Government of the Republic will establish two ports of entry, at such points of the colony as may be judged suitable, in conformity with the treasury code.

The vessels which touch at these ports, carrying merchandise for importation, and which, according to this contract and the laws of the Republic, is exempt from duties, can convey such merchandise to those points of the colony to which it is destined and load and unload according to the formalities of the law.

ART. IV. A title in conformity with the law shall be granted to the contractor for every mine which may be discovered in the colony.

ART. V. Cyrenius C. Fitzgerald, his associates, assigns, or successors are bound:

1. To commence the works of colonization within six months, counting from the date when this contract is approved by the Federal council in conformity with the law.

2. To respect all private properties comprehended within the boundaries of the concession.

3. To place no obstacle of any nature on the navigation of the rivers, streams, lakes, and lagoons, which shall be free to all.

4. To pay 50,000 bolivars in coin for every 48,000 kilograms of sarrapia and cauche which may be gathered or exported from the colony.

5. To establish a system of immigration which shall be increased in proportion to the growth of the industries.

6. To promote the bringing within the law and civilization of the savage tribes which may wander within the territories conceded.

7. To open out and establish such ways of communication as may be necessary.

8. To arrange that the company of colonization shall formulate its statutes and establish its management in conformity with the laws of Venezuela, and submit the same to the approbation of the Federal Executive, who shall promulgate them.

ART. VI. The other industrial productions on which the law may impose transit duties shall pay those in the form duly prescribed.

ART. VII. The natural and industrial productions of the colony, distinct from those expressed in Article V and which are burdened at the present time with other contracts, shall pay those duties which the most favored of those contracts may state.

ART. VIII. The Government of the Republic will organize the political, administrative, and judicial system of the colony, also such armed body of police as the contractor or company shall judge to be indispensable for the maintenance of the public order. The expense of the body of police to be borne by the contractor.

ART. IX. The Government of the Republic, for the term of twenty years, counting from the date of this contract, exempts the citizens of the colony from military service, and from payment of imposts or taxes, local or national, on those industries which they may engage in.

ART. X. The Government of the Republic, if in its judgment it shall be necessary, shall grant to the contractor, his associates, assigns, or successors a further extension of six months for commencing the works of colonization.

ART. XI. Any questions or controversies which may arise out of this contract shall be decided in conformity with the laws of the Republic and by the competent tribunals of the Republic.

Executed in duplicate, of one tenor and to the same effect, in Caracas, 22nd September, 1883.

Señor Heriberto Gordón signs this as attorney of Señor C. Fitzgerald, according to the power of attorney, a certified copy of which is annexed to this document.

[SEAL.] M. CARABAÑO, *Minister of Fomento.*
HERIBERTO GORDÓN.

And whereas the term fixed in Article V, 1, of this contract, on the petition of Fitzgerald, was extended to six months more, to count from the 22d of March, 1884;

And whereas during this term, v. g., on the 14th of June, 1884, this concession was transferred from Fitzgerald to "the Manoa Company (Limited);"

And whereas on the 9th of September, 1886, a resolution of the Federal Executive declared this contract "insubsistente ó caduco;"

And whereas on the 28th of April, 1887, the Congress approved a contract passed in Nice on the 1st of January, 1886, between Guzmán Blanco, envoy extraordinary and minister plenipotentiary of the United States of Venezuela to various courts of Europe, and George Turnbull, which contract reads verbally as the above-mentioned contract with Fitzgerald, except that an Article XII was added, reading as follows:

This contract shall enter into vigor in case of the becoming void through failure of compliance, within the term fixed for this purpose, of the contract celebrated with Mr. Cyrenius C. Fitzgerald the 22d of September, 1883, for the exploitation of the same territory;

And whereas on these contracts, respectively, are based the claims of "the Manoa Company (Limited)," all the claims but one of "the Orinoco Company (Limited)," and the claims of George Turnbull, it has to be considered what rights to claim for damages against the Venezuelan Government these contracts give to the claimants, "the Manoa Company (Limited)," "the Orinoco Company (Limited)," and George

Turnbull, and what obligations on the side of the Venezuelan Government to grant to the said claimants what they claim for can be based upon these contracts:

First, as to the Fitzgerald contract, purchased by the "Manoa Company (Limited)," as being prior in date;

Whereas this contract in due form was lawfully performed, all its stipulations, of course, were binding upon both contracting parties as long as the contract legally existed.

Now, whereas claimants' claims center in the assertion that this contract was unlawfully annulled by the Venezuelan Government, and while it is for losses suffered in consequence of this unlawful annulment that damages are claimed, it has to be examined—

Whether the contract was unlawfully annulled; and, if so,

Whether this unlawful action gives a right to the claimant to claim for damages and imposes a duty on the Venezuelan Government to grant what is claimed;

Now, whereas the incriminating act of the Venezuelan Government is the resolution of the Federal Executive of September 9, 1886, this resolution has to be considered. It reads as follows:

El Señor Heriberto Gordón, con poder del Señor C. C. Fitzgerald, celebró el 22 de Setiembre de 1883 con el Gobierno Nacional un contrato para explotar las riquezas que se encuentran en terrenos de propiedad nacional en el Gran Delta, debiendo empezar los trabajos dentro de seis meses contados desde la fecha expresada, y aunque trascurrido este término sin dar principio á ellos, el Gobierno le concedió una prórroga para verificarlos; y como el indicado contratista no ha cumplido las obligaciones que contrajo, según se expresa en el informe del Director de Riqueza Territorial especificados en el mismo, refiriéndose al artículo 5 del contrato en que se determinen; el Consejero Encargado de la Presidencia de la República, con el voto afirmativo del Consejo Federal declara insubsistente ó caduco el expresado contrato.

Comuníquese y publíquese.

Por el Ejecutivo Federal:

G. PAZ SANDOVAL.

Reading this resolution it is clear that the contract was declared "insubsistente ó caduco" for the reason that the contracting party (claimant) had not done what in Article V of the contract he pledged himself to do.

Now, whereas this Article V reads as stated above, and whereas it is quite clear by evidence, not only that the claimant on the said 9th of September, 1886, had not complied with one of his obligations; whereas even at the end of the prolongation of six months that was granted as a term to begin the works of colonization this colonization can not be said to have begun, as the sending of an engineer and some employees on the 24th of August can not be said to be "commencing the works of colonization" (even if the then governor of the Federal Territory of the Delta, on the petition of the claimants' administrator stating the arrival of these employees, added the words "so complying with the stipulation of Article V," because this authority could only state the facts, and was not the legal authority to judge whether by these facts claimant complied with the stipulation of the contract); whereas further on the original contractor himself, director of the claimant company, stated even as late as September, 1885, that claimant had not commenced the works of colonization;

That claimant had not established a system of colonization;

That claimant had not promoted the bringing within law and civilization the savage tribes which might wander within the territory conceded;

That claimant had not opened up and established any ways of communication, and that claimant had not even arranged that the company of colonization should formulate its statutes.

And whereas the claimant company itself as late as April 10, 1886, stated in a petition to the Government of Venezuela that it had not realized the works it was pledged to realize by the contract;

But that by the same evidence is shown that the claimant company, through its pecuniary position, could not have realized what by contract it was pledged to do, as, according to the company's president himself, the company from October, 1885, to November, 1885, never had in cash more than $6, and in that time did not spend a farthing for the execution of the contract, while during all that time the drafts drawn by the company's Venezuelan attorney, Mr. Heriberto Gordón, were protested, as they could not be paid, with the exception of two for $400 each, which were paid by Mr. Safford, and not by the company's cash;

And whereas evidence shows that in January, 1885, stockholders resolved for the execution of the contract to issue $5,000,000 in bonds, which in November of that year were secured by mortgage on the concession, and for which even until November, 1886, not a penny was received by the company, that even the printing of the bonds could not be paid, and that Fitzgerald, who had sold the concession for 44,750 shares of $100 nominal each, in July, 1886, was willing to sell them for a few thousand dollars. The facts alleged as a reason for declaring the contract "insubsistente ó caduco" are proved, and it is clearly shown by evidence that on the 9th of September, 1886, the claimant company had in nowise fulfilled any of the duties imposed by the contract.

Now, whereas it is settled that there were sufficient reasons to declare the contract "insubsistente ó caduco," it has to be seen if by the declaration of the Federal Executive the contract really was annulled. And then it has to be remembered that the question could be and really has been put whether No. 1 of Article V of the contract was a condition, the nonfulfillment of which would retroact, so that it were as if the contract had never existed—in which case the resolution would be a simple act whereby it was stated that the contract did not exist, that it was "insubsistente"—and the contract would really not exist;

Or whether this No. 1—as all the other numbers of Article V—was an obligation, the nonfulfillment of which would be a sufficient reason for making the contract "caduco"—that is to say, to annul the contract that was till then really existing—which annulment, according to the general principles of equity, accepted by the laws of almost all the civilized nations, could not be executed by one of the parties, but had to be pronounced by the proper judge.

Now, whereas Article V expressly says that the concessionary, his associates, assigns, and successors "se obligan" (pledge themselves) to begin within a certain time, and whereas they could not begin without a concession, because they would have had no right to work according to the concession on the Government grounds granted by the concession if they had not this concession; and whereas they could not have this concession, the contract by which it was granted not existing;

It seems evident that according to the will of contracting parties (the supreme law in this matter) this No. 1 of Article V, as all the other numbers of this article, was an obligation and not a condition;

Wherefore the mentioned executive decree can not be regarded as a mere declaration that the contract was "insubsistente," but has to be regarded as an act by which the Government declared it "caduco"—that is to say, "annulled it"—which act could never have the effect of really annulling the contract, because in cases of bilateral contracts, the nonfulfillment of the pledged obligations by one party does not annul the contract ipso facto, but forms a reason for annulment, which annulment must be asked of the tribunals, and the proper tribunal alone has the power to annul such a contract—this rule of the law of almost all civilized nations being in absolute concordance with the law of equity, that nobody can be judge in his own case.

This annulment is superfluous, of course, when both parties agree that the contract is annulled because the obligations were not fulfilled, and the executive decree in question can not be regarded as anything more but a communication on the part of the Government that it thought the contract was ended, to which the other party could agree or not agree as it thought fit; and if it did not think this fit the contract would subsist until its annulment was pronounced by the proper tribunal.

In consequence of all the beforesaid we stand here before the case of a contract between two parties, of which one, disregarding all the pledged obligations, gave more than sufficient reason for the annulment of the contract, while the other acted as if the contract were annulled by its own declaration of that annulment, in that way disregarding (as if not existing any longer) an always still lawful existing contract.

Now, it might be asked, if absolute equity without regard to technical questions would allow to one of the parties the right to a claim based on a contract, the existence of which is, it is true, unjustly denied by the opposing party, but all the stipulations of which contract were trespassed by that same demanding party.

But there is more to consider.

It has not to be forgotten that the contract in question has an Article II reading as follows:

> Any questions or controversies which may arise out of this contract shall be decided in conformity with the laws of the Republic and by the competent tribunals of the Republic;

which article forms part of the contract just as well as any of the other articles, and which article has to be regarded just as well as any of the other articles, as the declaration of the will of the contracting parties, which expressed will must be respected as the supreme law between parties, according to the immutable law of justice and equity: pacta servanda, without which law a contract would have no more worth than a treaty, and civil law would, as international law, have no other sanction than the cunning of the most astute or the brutal force of the physically strongest.

It has to be examined, therefore, what parties intended by introducing this article in the contract; and in how far does it interfere with the claims herein examined?

Now, whereas it is clear that in the ordinary course of affairs, when nothing especially was stipulated thereupon, all questions and controversies arising for reason of the contract would have to be decided by the competent tribunals and in conformity with the laws. There must be looked for some special reason to make this stipulation,

and to induce parties to pledge themselves expressly to a course of action they would without this special pledge be obliged to follow just as well. There must be a meaning in the article which makes the judges by law judges by contract as well; and this meaning can be no other but that parties agreed that the questions and controversies that might arise for reason of the contract should be decided only by the competent tribunals of the Republic, and therefore not by the judges of the country of the other party, if he be a foreigner, nor by arbitration either national or international, while it is not to be overlooked that it is not said in the contract that *the claims* of one party against the other should be judged (that is to say, allowed or disallowed) by the mentioned judge only, but that only these judges should decide about the *questions and controversies* that might arise; which decision of course implies the decision about the question whether the interpretation of the contract by one of the parties, or that party's appreciation of facts in relation to the contract were right, and therefore could be a good reason for a claim for damages, so that properly speaking there could be no basis for a claim for damages, but the decision of these expressly indicated judges about this question or controversy.

Wherefore if one of the parties claims for damages sustained for reason of breach of contract on the part of the other party, these damages can, according to the contract itself, only be declared due in case the expressly designed judges had decided that the fact, which according to the demanding party constituted such a breach of contract, really constituted such a breach, and therefore formed a good basis whereon to build a claim for damages. Parties have deliberately contracted themselves out of any interpretation of the contract and out of any judgment about the ground for damages for reason of the contract, except by the judges designed by the contract; and where there is no decision of these judges that the alleged reasons for a claim for damages really exist as such, parties, according to the contract itself, have no right to these damages, and a claim for damages which parties have no right to claim can not be accepted. Parties' expressly expressed will, and their formal pledge that for reason of the contract no damages should be regarded as due by those declared due by the indicated judges, must be respected by this Commission, when judging about a claimed based on such a contract, just as well as all the other stipulations of that contract, and therefore it can not declare due damages that parties in that contract solemnly themselves declared not to be due.

And whereas all the claims of the Manoa Company (Limited), as well as all the claims but one of the Orinoco Company (Limited) are claims for damages based on points that are questions and controversies arisen for reason of the Fitzgerald contract;

And whereas not one decision of the competent tribunals of Venezuela about these questions and controversies that would make these damages ne was laid before the Commissson, while according to the contract self between parties only such damages should be due which were ked on such grounds as would have been declared good grounds by ese tribunals, the Commission can not declare due the damages laimed which the parties, by contract, declared not to be due.

And therefore it can not allow these claims.

Now, as to the claims of George Turnbull,

Whereas, as was shown above, on the 1st of January, 1886, on the 11th of September, 1866, and on the 27th of April, 1887, the Fitzgerald contract was as yet legally existing, the Republic of Venezuela could not dispose on behalf of Turnbull of what it already had disposed on behalf of another, and therefore Turnbull obtained no right whatever of property in the concession under and by virtue of the contract confirmed by Congress on the 27th of April, 1887;

And whereas the mines of Pedernales and Imataca formed part of the still existing Fitzgerald concession, Turnbull's alleged titles to these mines are equally void;

And as all his claims are based on this void contract and these void titles, they can not be allowed.

Lastly, as to the claim of "the Orinoco Company (Limited)," that is not based on the Fitzgerald concession.

Whereas evidence shows that on the 19th of November, 1898, Carlos Hammer, with power of attorney from Benoni Lockwood, jr., in the name of and representing "the Orinoco Company (Limited)," paid to the Venezuelan Government the sum of 120,000 bolivars for rights purchased on a judicial sale on November 18, 1898, which rights, as evidence shows, the Republic could not dispose of, and out of the possession of which rights claimant was expelled by the proper authorities of that Republic;

This unduly received sum of 120,000 bolivars has to be restored to him who unduly paid it.

Wherefore the Republic of the United States of Venezuela shall have to pay to "the Orinoco Company (Limited)" the sum of 120,000 bolivars, or $23,076.93, with interest at 3 per cent. per annum from the 19th of November, 1898, to the 31st of December, 1903.

The American Electric and Manufacturing Co. Case.

(By the Umpire:)

A clause contained in a contract that "doubts and controversies which may arise in consequence of this contract shall be settled by the courts of the Republic in conformity with its laws" does not preclude the claimant from demanding damages from the Government for the breach by it of a collateral promise.

The breach of a promise to do an illegal act can not be made the basis of a claim, and a promise by the Government to annul an existing contract containing the clause that "doubts and controversies that may arise in consequence of this contract shall be settled by the courts of the Republic and in conformity with its laws" is a promise to do an illegal act.

Grisanti, *Commissioner* (claim referred to umpire; no opinion by the American Commissioner):

The American Electric and Manufacturing Company deduces a claim against the Republic of Venezuela, adducing as the grounds for it, the facts stated in its memorial, some of which denoting most importance, will presently appear in this statement.

In May, 1887, the Government of Venezuela made a contract in virtue of which they granted Aquilino Orta—

the right to establish telephonic communication within the towns and cities of the Republic and between the same; also in the country districts and country villages and between both; and further, to extend the same communication outside of Venezuela by such means as he may deem most suitable.

In July, 1883, the Government of Venezuela had signed another contract which had the same object, with the Intercontinental Telephone Company of New Jersey, represented by Mr. J. A. Derrom.

After several assignments the claimant company became an assignee of the contract signed with Orta, and at the time of fulfilling the same by establishing some telephonic lines entered into competition with the Intercontinental Telephone Company of New Jersey, in which competition the claimant company was defeated, and ended in its transferring the contract to its competitor.

This simple statement, strictly adhering to the truth, is an abridged record of the case. On what principle, then, of justice or equity can "the American Electric and Manufacturing Company" rely for its claim. From what juridical postulate or from what legal precept does liability arise for Venezuela to indemnify damages caused by the defeat in that struggle of enterprises, considering the political economy as the most efficacious means of ameliorating and rendering products cheaper and developing industrial progress?

The American Electric and Manufacturing Company pretends to found its claim on the grounds of article 8 of its contract, which is worded as follows:

> The Government shall not grant similar concessions to any other person or company, nor shall it permit additions to contracts interfering with the present one, during a period of nine years, which shall be reckoned from the date on which it is signed, and may be extended for three years longer, at the option of the Government.

The foregoing article was not infringed, as the Government of Venezuela did not grant any concession that impaired or collided with the right of the claimant company.

It is also adduced as the grounds for the claim that the Government authorities of Venezuela assured the claimant company that as soon as its telephone plant should be in operation the concession of 1883 would be revoked.

Of this assertion, which is inverisimil, not the least proof has been produced; and in case such promise had been given, not being legal, it could not give rise to any right. On the other hand, the principal reason assigned for said revocation, which was the poor service of the Intercontinental Telephone Company of New Jersey, is denied by the real facts, as it defeated the claimant company in competition.

It is the opinion of the Venezuelan Commissioner that on the strength of the reason stated the claim specified, which the American Electric and Manufacturing Company deduce, should be disallowed.

BARGE, *Umpire:*

A difference of opinion having arisen between the Commissioners of the United States of America and the United States of Venezuela this case was duly referred to the umpire.

The umpire having fully taken into consideration the protocol and also the documents, evidence, and arguments, and likewise all the communications made by the two parties, and having impartially and carefully examined the same, has arrived at the following decision:

Whereas the claimant in this claim was the proprietor of a contract made between the Government of Venezuela and one Aquilino Orta about the establishment of telephonic communication, and claims for damages suffered by him through the fault of the Venezuelan Government in his enterprise to realize the object of this contract;

And whereas article 10 of this contract reads as follows:

Doubts and controversies that may arise in consequence of this contract shall be settled by the courts of the Republic in conformity with its laws

the honorable agent of the United States of Venezuela opposes that before coming to this Commission the claimant company ought to have attempted to recover the pretended damages before the judges chosen by itself with its contractor.

Whereas, however, it is clearly shown by the evidence before the Commission that at the moment Aquilino Orta made said contract with the Venezuelan Government that Government was bound by a prior contract with another party, which contract, if not annulled, would make so much as void the contract passed with said Orta, wherefore, as is shown in the evidence, the claimant company and his predecessors did not cease to ask for the annulment of the prior contract, basing their demand on the pretended promise of the Government to annul that contract, and wherefore the honorable agent of the United States of America in his replication (which replication at the same time bears the character as a brief on behalf of the claimant) cites: "The failure on the part of the Venezuelan Government to fulfill its promise with respect to this cancellation of the (prior) concession" as cause of claimant's losses for which damages are claimed;

Whereas, therefore, not the contract, but the pretended promise from which the contract had to deduce its value, shows itself as cause of this claim, no article of the contract seems apt to interfere with the question of jurisdiction about a claim originated in the nonfulfillment of a promise by which only that contract would obtain its full force and proper value;

Wherefore the fact that the claimant company did not first go to judges chosen by itself in this contract does not disable it to come to this Commission for decision in a claim, originated in pretended promises whereon the force of the contract depended.

And now as to the main question:

Whereas article 1 of the contract made in 1887 with Aquilino Orta, afterwards transferred to the claimant, reads as follows: "The Government grants to Aquilino Orta the right to establish telephonic communication *within the towns and the cities* of the Republic and *between the same;* also in the *country districts* and the *country villages* and *between both*," etc., while article 1 of a contract made in 1883 between the same Government and one J. A. Derrom (law of 31 July, 1883), reads as follows: "The Intercontinental Company of Telephone pledges itself to establish telephonic lines in the *interior of the cities* and *between the principal cities and communities* of the Republic where this may be deemed necessary," being followed by these words of article 3:

"The Government pledges itself during the time of fifteen years, beginning from this date, not to give equal concession to any other person or company." It is clearly shown that the concession given to Aquilino Orta was in flagrant opposition with the rights granted to the Intercontinental Company, and that the contract with Orta could never obtain its main effect as long as this contract with Derrom existed, wherefore the cancellation or the annulment of this prior contract was the condition sine qua non for the contractors of the later contract to attain the main effect of their act; and

Whereas the evidence laid before the Commission shows that claimant and his predecessors were well aware of this fact, as they never ceased to appeal to the Government for the revocation of the contract under which the Intercontinental Telephone Company was operating; while it may be regarded as very characteristic for the way the contract with Orta was looked upon by its possessors that this contract a few months after its origin, being already transferred into the hands of the fourth possessor—this fourth possessor (the American Telephone Company, Consolidated, from which the claimant company afterwards purchased it)—refused to pay it with $100,000, but agreed, as the evidence says, "only to give in payment thereof one million two hundred and fifty thousand dollars in shares," thus valuing its own shares at the very outset of the enterprise at less than 8 per cent; and

Whereas further on the former legal attorney of the American Telephone Company, who transacted the purchase of the contract by that company (from which the company, the claimant company, in turn purchased its rights), declared under oath, as the evidence shows, that "it was with the explicit understanding that *the Intercontinental Company was to be entirely removed* that the American Telephone Company undertook to establish the telephone business in that country (Venezuela)."

By all these facts it is clearly shown that to the knowledge of the claimant company and its predecessors the contract with Orta was in flagrant opposition with the prior contract made with Derrom, and could not have its main effect without the annulment of this prior contract, which annulment the possessor of the Orta contract pretended and pretends was promised to them by the Venezuelan Government, and that therefore not the contract itself but the nonfulfillment of the promise that had to give the contract its force—or, as the honorable agent of the United States puts it in his answer, "the failure on the part of the Venezuelan Government to fulfill its promise with respect to the cancellation of the Intercontinental Telephone Company" is to be regarded as the cause of this claim.

And whereas no direct proof of this promise is to be found in the evidence:

But whereas the fact that the Government decided to make the Orta contract in flagrant opposition with the prior Derrom contract, and the fact that the Government has not contested the different protests of the claimant company and its predecessors as to the nonfulfillment of this promise, might seem to point to the probability of such promise having been (at least orally) given.

Whereas, on the other side, the facts—

First. That the Government never interrupted the acts of the Intercontinental Telephone Company when this company continued to carry out the prior contract;

Second. That no proof of any sign of difficulties between the Government and the Intercontinental Telephone Company is given except the complaint of the company not reducing their tariffs;

Third. That the Government, on the contrary, always behaved in respect to the Intercontinental Telephone Company in a way which made the claimant company and its predecessors speak about the Intercontinental as about "the favored company" and complain of the Government's predilection for that company, and which even made the honorable agent of the United States of America point to

"the favors shown to the Intercontinental Telephone Company" as to one of the reasons for the ultimate sacrifice of the undertaking of the claimant company and its predecessors; seem to speak for the improbability of the Venezuelan Government ever intending to cancel the prior contract in favor of the second, and consequently for the improbability of any formal promise as to that cancellation—for all which reasons the fact that the Government of Venezuela promised to the claimant company and its predecessors the cancellation of the Derrom contract can not in equity be said to be sufficiently proved.

Whereas further on article 8 of the Derrom contract reads in the same words as article 10 of the Orta contract:

Doubts and controversies that may arise in consequence of this contract shall be settled by the courts of the Republic in conformity with its laws,

and

Whereas, therefore, even if, as claimant assures, the Government wanted to finish up with the Derrom concession, and for that reason promised its cancellation, this promise would be a promise to do an illegal act; as the Government as well as the other party was bound to this article, and therefore to the laws of the country, which laws, in complete accord with general principles of law, would not allow the Government to cancel the contract on its own authority, but would require that the annulment be declared by an adverse judgment between the contracting parties.

For which reason such a promise, even when proved to have been given, would not give rise to any right as being illegal, and with relation to the contract (which without it would be void of its main value) would stand as a condition explicitly given orally and implicitly contained in the contract, which condition, according to the laws of the country as well as according to the general principles of law, would be null, and make null the contract that depends on it.

Whereas, therefore, whatever may be or might have been the wrong of the Government in making a contract in flagrant contradiction with a prior contract, or in promising to do an illegal deed so that the later contract might have its force, absolute equity forbids to recognize a right to a claim founded either on the breach of a contract that could only get its force by the fulfillment of a promise to do an unlawful deed, or on the nonfulfillment of this unlawful promise itself.

The claim of the American Electric and Manufacturing Company has to be disallowed.

RAYMOND ET AL. CASE.

(By Bainbridge, Commissioner):

The expenditure of money in necessary repairs of a vessel creates a lien thereon in favor of the party advancing the money and the lien follows the vessel no matter into whose hands she may fall.

The acceptance of an assignment in payment of the debt thus contracted releases the lien.

(By Grisanti, Commissioner):

The assignment of property in payment of a debt amounts to a sale of said property, and the acceptance of such an assignment releases the debtor.

BAINBRIDGE, *Commissioner* (for the Commission):

It appears from the evidence that on May 1, 1867, one Charles M. Burns, a subject of Great Britain, being indebted to Ovide de Sonneville, a French subject, in the sum of $35,000, executed and delivered

to the latter at New Orleans a mortgage or bottomry bond upon a certain steam vessel owned by Burns, called the *Irene*. At the same time Burns gave De Sonneville power of attorney to sell the vessel or to make contracts for the affreightment or charter party thereof, and to collect all sums that may be due said steamship.

De Sonneville took possession of the vessel and made a voyage first to Barbados, and thence to the island of Trinidad. Near Barbados the *Irene* collided with another steamer, and in order to pay for the repairs rendered necessary by the accident, De Sonneville, on October 9, 1868, borrowed from Charles Raymond, a citizen of the United States, the sum of $2,500.

At Trinidad, on September 12, 1869, De Sonneville, as attorney in fact of Charles M. Burns, entered into a contract with one George Fitt, as representative of the Venezuelan Government, for the charter of the *Irene* for a period of not less than sixty days at the stipulated rate of $100 per day. The contract provided that the Government should be responsible for all expenses and risks of the steamer, and that in case she were lost or suffer any very severe damage that might render her useless, then her value, fixed at $30,000, should be paid to De Sonneville. Fitt paid De Sonneville the sum of $5,000 at the time of the contract in order to free the vessel from obligations which caused her detention at Port of Spain, and this sum De Sonneville agreed to credit upon the amount the ship might earn under the charter. The contract also stipulated that the *Irene*, "being of English nationality," could not be engaged in a naval combat or be used for any operations from which the law of nations prohibits a foreign vessel.

On November 20, 1869, the Government of Venezuela notified De Sonneville that the charter having expired he might take possession of the *Irene*, and that his account for the charter would be liquidated. De Sonneville, however, refused to receive the steamer because of serious injury suffered by the vessel in one of her boilers on October 17 previous, and insisted that the Government of Venezuela either repair the injury or pay the price stipulated in the contract for the vessel. On November 27, 1869, De Sonneville, "in the name and representation of Charles M. Burns, subject of Her Britannic Majesty," made a protest before the register at Puerto Cabello, and on December 1, 1869, "as attorney of Mr. Charles Burns, a subject of Her Britannic Majesty," he made protest before the British vice-consul at Puerto Cabello in regard to the action of the Venezuelan authorities and the injuries sustained by the steamer *Irene*, "the exclusive property of said Charles M. Burns."

On December 15, 1869, De Sonneville addressed a communication to Venezuelan minister of war and navy, stating that he was obliged to leave the *Irene* in the possession of the Government until the contract was complied with, and considering it in the service of the Republic, but suggesting that a commission be appointed to examine it, and if found in the same state in which it was delivered he would receive it back, and that if, on the contrary, the commission should find that repairs were needed they should be made at the cost of the Government.

De Sonneville eventually abandoned the ship, and for many years continued to urge his claim upon the Government. In 1873 he instituted proceedings in the high Federal court, but the suit was subsequently withdrawn. All of his efforts to obtain an adjustment of his claim proved fruitless.

In 1878, De Sonneville made a holographic will, in which he declared himself indebted to Charles Raymond in the sum of $2,500, with interest, and desired that after his death his property should be used to satisfy said indebtedness, and particularly setting forth that if the other property left by him should not be sufficient for that purpose, the necessary sum should be appropriated out of any recovery made on his claim against Venezuela occasioned by the loss of the *Irene*. He left to Florence Raymond, daughter of Charles Raymond, the sum of $5,000, and the surplus to his brother and sister in France.

In April, 1890, De Sonneville executed an assignment to Raymond of all his "present and future properties" in order to pay the indebtedness due the latter. The assignment states that "the properties which I give him in payment are the following:"—enumerating some fourteen different pieces of property, but not including the claim against the Government of Venezuela. De Sonneville died on June 15, 1893.

A claim is now presented here on behalf of the heirs of Charles Raymond as follows:

Value of vessel, as stipulated in contract	$30,000
127 days' hire of vessel, from September 15, 1869, to January 20, 1870, when abandoned	12,700
130 tons of coal, at $12 per ton	1,566
	44,260
Credit payment on account, September 12, 1869	5,000
Balance due January 20, 1870	39,260
Interest at 3 per cent from January 20, 1870	39,260
Total	78,520

Notwithstanding the fact that De Sonneville made the contract with the representative of Venezuela for the charter of the *Irene* as attorney in fact of Charles M. Burns, and subsequently made his protests in the name and representation of Burns as the owner of the steamer, it is quite evident that Burns's interest in the boat was merely nominal. The debt of Burns to De Sonneville secured by the bottomry bond was $35,000. The valuation placed upon the boat in the contract with Fitt was $30,000. The obvious intention of the parties to the bond was to cancel Burns's obligation, and the explanation given of the transaction is that Burns's nominal ownership would entitle the *Irene* to fly the English flag, under which it was desired she should sail. De Sonneville was at any rate in lawful possession, duly empowered by Burns to make out of the sale or use of the vessel the amount of the debt; and the question at the base of De Sonneville's claim is his beneficial interest in the contract with the Government of Venezuela and the rights accruing to him from its breach. Apparently that interest did not exceed the amount which, under the bond and power given by Burns, he was entitled to receive from the use or sale of the vessel, leaving Burns no equitable interest whatever in any claim arising out of the contract.

De Sonneville was a French subject, and the Commission has no jurisdiction of his claim against Venezuela, except in so far as by proper assignment or transfer it may have become the property of citizens of the United States. The contention made here on behalf of the claimants is that they are owners of De Sonneville's claim, either—

First, as a whole under the assignment of 1890; or,

Second, under the will of 1878, of so much of the claim as the amount of De Sonneville's indebtedness to Raymond, with interest, and the amount of the bequest to Florence Raymond.

The assignment of April 29, 1890, recites the indebtedness due to Raymond, and states: "In order to pay that debt I hand over to him all my present and future properties, as I have no heirs," and that "the properties which I give him in payment are the following:" enumerating fourteen different pieces of property.

These properties are represented in the assignment to be worth 25,000 bolivars, free from all incumbrances, annuity, or mortgage. It is alleged that frequent attempts were made after De Sonneville's death to realize on the properties specifically enumerated in the assignment, but without success, and that although at one time the said properties may have had some value, it consisted principally in the coffee groves, which have since become ruined, and that these properties are at present absolutely worthless.

Among the properties which De Sonneville "gave in payment" by the assignment, the claim against Venezuela does not appear. There is certainly no reason to infer that De Sonneville intended to include it, inasmuch as the estimated value of the property enumerated exceeded the amount of the debt. The general terms are controlled by the specific enumeration, which evidently expresses the definite intention of the assignor, and to which in construction the conveyance must be limited. Expressio unius exclusio alterius. The position that the Raymond heirs are owners of the De Sonneville claim as a whole under the assignment is clearly untenable.

The alleged holographic will of De Sonneville bears date November 15, 1878. Substantially it states that, desiring as far as possible to repair the losses he has occasioned to his excellent friend, Mr. Charles Raymond, of New Orleans, by the want of punctuality on the part of the Republic of Venezuela toward himself, he declares himself indebted to Raymond or to his legitimate heirs in the sum of $2,500, which Raymond had delivered to him at the English island of Barbados in October, 1868, to cover the expenses of repairs which had been occasioned by the collision of another steamer with his own; that if the debt should not be paid before his death he desired that his property should be used for its payment, and that the surplus should then become the property of his goddaughter, Florence Raymond, and that, being a creditor of the Republic of Venezuela of a debt occasioned by the charter of a steamer, the said credit, after its recovery, he wished to be distributed as follows: If the properties left by him were not sufficient to pay the debt, with interest, of Charles Raymond, the necessary sum should be employed for that purpose out of the money, and to his goddaughter, Florence Raymond, the sum of $5,000 should be paid, the surplus to go to his brother and sister in France.

Two witnesses certify to the foregoing instrument and that De Sonneville had declared to them that in case of his death he desired the disposition made therein to be put into effect by the French consular authorities.

There is no evidence presented that this instrument was ever legally proved as the last will and testament of De Sonneville, or that there has ever been an administration of his estate. A will must be proved before a title can be set up under it, and, so far as the adequacy of its execution is concerned the probate must be according to the law of

the testator's last domicile. In the absence of such proof, the document in question must be held inoperative to pass any rights whatsoever. The probate jurisdiction of this Commission is believed to be extremely limited.

The evidence shows that, in order to make the repairs rendered necessary by the collision of the *Irene* with another steamer near Barbados, De Sonneville borrowed from Raymond on October 9, 1868, the sum of $2,500. The expenditure of this money in necessary repairs in a foreign port created a lien in Raymond's favor upon the vessel. The presumption of law is that when advances are made to the captain in a foreign port upon his request for the necessary repairs or supplies to enable his vessel to prosecute her voyage, or to pay harbor dues, or for pilotage, towage, or like services rendered to the vessel, they are made upon the credit of the vessel as well as upon that of her owners. It is not necessary to the hypothecation that there should be any express pledge of the vessel, or any stipulation that the credit should be given on her account. (The *Emily B. Souder v.* Pritchard, 17 Wall., 666. Hazlehurst *v.* The *Lulu*, 10 Wall., 192. Merchants' Mut. Ins. Co. *v.* Baring, 20 Wall., 159.)

It is notorious (The Ship *Virgin*, 8 Pet., 538) that in foreign countries supplies and advances for repairs and necessary expenditures of the ship constitute, by the general maritime law, a valid lien on the ship. * * *

In Wilson *v.* Bell, 20 Wall., 201, the Supreme Court of the United States say:

> The ordering, by the master, of supplies and repairs on the credit of the ship is sufficient proof of such necessity to support an implied hypothecation in favor of the material man or the lender of money, who acts in good faith.

Under the foregoing principles of maritime law it is clear that Raymond held a lien upon the *Irene* for the advances made by him at De Sonneville's request, and expended by the latter in the necessary repairs. Raymond's lien followed the ship when the Venezuelan Government took possession of her under the charter party of September 12, 1869.

> It is the very nature and essence of a lien that, no matter into whose hands the property goes, it passes "cum onere." (Burton *v.* Smith, 13 Pet., 464.)

In Myer *v.* Tupper, 1 Black, 522, it was held that where respondents purchased without notices of a lien for repairs or supplies in a foreign port their want of caution in this respect could not deprive the libellants of a legal right they had done nothing to forfeit.

Mr. Raymond, therefore, might have pressed his remedy against the Government of Venezuela in virtue of his lien upon the vessel to the extent of his interest in case of the violation of the contract under which the Government obtained possession, or he could rely upon the personal responsibility of De Sonneville for the debt. It is quite evident that Raymond chose the latter of these alternatives. His claim against De Sonneville appears to have been in the hands of Venezuelan lawyers for a number of years. Finally, on April 29, 1890, De Sonneville, in order to discharge the debt to Raymond, executed the assignment transferring thereby specified pieces of property "which represent 25,000 bolivars value, free from all incumbrances, annuity, or mortgages." And one Ascanio Negretti, lawyer, "with power of attorney from Charles Raymond," accepted this transfer. In accord-

ance with law, this assignment was registered in the registry of Altagracia de Orituco on May 16, 1890, and also in the French legation at Caracas on October 21, 1891. The valuation of 25,000 bolivars placed upon the property thus transferred in satisfaction of the debt is included in the instrument signed by both De Sonneville and the representative of Raymond, and must be regarded as a part of the agreement. It equals, if it does not excel, the amount due at the time.

The acceptance of this transfer discharged the debt of De Sonneville to Raymond and canceled any claim which Raymond might have had against the Government of Venezuela in virtue of his lien upon the steamer. The lien could not exist after the debt was paid. As the assignment of the property specified was received in discharge of a money debt due from De Sonneville, it is in judgment of law to be considered as the same thing as if De Sonneville had actually paid money to the amount agreed upon in the assignment as being the value of the property transferred. The subsequent depreciation in value can not operate to revive the debt.

The claim must, therefore, be disallowed.

GRISANTI, *Commissioner:*

Elizabeth Wild Raymond, widow of Charles Raymond, deceased, Anna J. Raymond, Elizabeth E. Raymond, Letitia J. Raymond, Florence A. Raymond, Edwin J. Raymond, Charles J. Raymond, and Victoria R. Gauce (née Raymond), children of said Charles Raymond, deceased, claim of the Government of Venezuela payment for $78,520 as capital and interests of a credit which they, sole heirs at law of the mentioned Charles Raymond, deceased, pretend holding against Venezuela.

The history of the claim is as follows:

On September 12, 1869, a contract was signed at Port of Spain between George Fitt, acting on behalf of the citizen Gen. José Ruperto Monagas, at that time President of Venezuela, and Ovide De Sonneville, acting as proxy for Mr. Charles M. Burns, owner of the British vessel *Irene*, in virtue of which contract Fitt chartered said vessel *Irene*, having on board 130 tons of coal for the service of carrying troops on account of the Government of Venezuela. (Art. 1.)

Ovide De Sonneville received from George Fitt $5,000 with which he paid the debts of the vessel in Port of Spain, and for which debts she was there detained. (Art. 2.)

Both contracting parties agreed that if the Government of Venezuela decided to buy the vessel the price should be $30,000; if not, the vessel would continue chartered at the rate of $100 per day, for a term of not less than sixty days, it being a formal condition of said contract that the Government of Venezuela on the expiration of said term, or other term which the parties might agree to extend, should, on returning Sonneville the vessel, pay him for the 130 tons of coal above referred to, at the price the same should happen to have at the port of the Republic where the return takes place; also that he should be paid such amount as both parties might consider necessary for conducting said vessel to the harbor of Port of Spain, and also the extra pieces lost or worn out. (Art. 3.)

In the $100 per day stipulated as the rent for the *Irene* none of her expenses were included therein, all of which were on account of the Government of Venezuela, and if the vessel, during the time of her

leaving Port of Spain up to that on which she was returned to Sonneville, should be lost or suffered very serious injuries, such as to make her useless, Sonneville should be paid her value, which beforehand was fixed at $30,000, and would forthwith be the property of the Republic. If the injury sustained by the vessel were of easy repair, the Government of Venezuela had the option of returning her, previously making the necessary repairs at their own expense. (Art. 4.)

On November 23, 1869, a note was addressed to Sonneville by the Jefe de estado mayor general in Puerto Cabello to the following effect:

> The term of the contract for chartering the vessel *Irene* having expired, and the war being over, the citizen general president in campaign orders me to notify you thereof, so that you may this day take charge of the mentioned vessel under formal inventory, and afterwards call at the general headquarters to settle your charter account, balance of coal missing to make up the 120 tons and agree as to the amount required for your sailing to Port of Spain.

On November 24 Sonneville answered, denying to receive the vessel if the very serious injury suffered by the vessel in one of her boilers on October 17 were not repaired, unless the Government should choose to pay the price fixed on the vessel.

Afterwards a discussion followed between the Government of Venezuela and Sonneville in reference to the case, and steps were taken by the latter to apply to the French Government, and pretending to apply to the British Government also, for them to second his motion in the claim against Venezuela. On April 29, 1890, Sonneville issued a document wherein he declares to be a debtor to Charles Raymond for the amount of 12,500 bolivars, which he acknowledged to have received from him to settle his (Sonneville's) account with the consignee of the British vessel *Irene*, and in payment for that amount he assigned to him the sole possession of several properties perfectly specified in the aforementioned document.

The principal grounds whereon Messrs. Raymond lay their claim are the following:

> In the year 1890, as above stated, Mr. De Sonneville assigned all his property to Mr. Charles Raymond, predecessor in interest of the present claimants. Neither Mr. Charles Raymond nor Mr. Sonneville were paid any sum of money on account of the claim.

To the judge of the lawfulness or unlawfulness of this claim the following point must, above all, be examined:

Is, or is not, the mentioned claim included in the dedition which Sonneville made in payment to Charles Raymond, contained in the document drawn at Caracas on April 29, 1890, and registered in the subaltern registry office of the Monagas district on the 16th of May of the same year? In other words, did Sonneville transfer to Raymond the referred-to credit against Venezuela by virtue of said dedition in payment?

The Venezuelan Commissioner is of opinion that the question put must be answered negatively without the least vacillation. Consequently the claim not being expressly included in the dedition in payment, it is excluded from the same because in all contracts, such as this, which have the object of alienation of property, it is an essential requisite that the goods alienated be perfectly determined.

I must not let the fact go by, that some Venezuelan lawyers of undeniable knowledge argued that on the strength of the foregoing contract Charles Raymond was the owner of the claim; but such is an error,

and errors have no authority, however respectable the persons who fell into them.

This erroneous opinion is undoubtedly derived from the generality of the terms with which the dedition of payment commences. Sonneville says:

* * * And to pay that amount (the 12,500 bolivars) I deliver him all my present and future property, as I have no heirs, and have on the other hand my gratitude bound to Mr. Charles Raymond, to whom I am attached not only by the ties of friendship but also by those of spiritual relationship.

But the amplitude and vagueness of this clause are perfectly determined and limited by the phrase following forthwith: "The goods which I give him in payment for my debt are the following," then said goods are specified. The former generality must be interpreted in the light of this limitation, without which it would be deprived of judicial and even rational value. If there existed only the clause, "I deliver him my present and future goods," the contract would completely lack legal value. The fact is, that when the dedition in payment has the object, as in the present case, of extinguishing a pecuniary debt, no difference exists between the former and an ordinary sale; both contracts are identical. Therefore the consent of the contracting parties is an essential requisite for the existence of every contract, which must be in regard to the thing or price when it refers to buying or selling, and in regard to the debt and thing transferred for payment if it refers to a dedition in payment, and without determining these two elements consent is impossible because it lacks matter, and consequently the existence of the contract would also be impossible. Wherefore, if the dedition in payment refers to "present and future goods," with no other explanation, it would never have attained judicial existence. Neither Sonneville would have known what he gave, nor Raymond what he received; and consent requires knowledge—consent can not be given to what is not known.

If the principles and reasons stated were laid aside and it were attempted to hold that the claim being the property of Sonneville he had the will to transfer it to Raymond, such assignment could have no effect against the Government of Venezuela, owing to its lack of visible existence.

Another question:

Was or was not the credit of 12,500 bolivars extinguished in virtue of the assignment, which, according to the public document above, refers to Charles Raymond, held against Sonneville?

It most certainly was. That is the natural, judicial effect of an assignment, and as the one in question is pure and simple—that is to say, that it is not subject to any conditions, either suspensive or resolutory—the mentioned extinguishing effect took place definitively and perpetually from the very moment of signing the contract.

It is alleged that no price was able to be got for the sale of the property assigned in payment, and that it fell to ruin. This fact is very unlikely, as the transaction was carried out in 1890, at a time when Venezuela reached its greatest material prosperity. The property assigned in payment consisted of coffee plantations, and at that time the hundredweight of this grain was worth ———.[a] But even admitting such allegation to be a fact, it could not revive the credit, as its extinction was complete and forever.

[a] Left blank in original.

Before closing, the writer begs to state a few more remarks which he considers unnecessary but not irrelevant.

In the charter party of the vessel *Irene*, Sonneville appears acting as proxy for Charles M. Burns, British subject; the latter then is the real charterer and the only owner of the rights acquired as such.

When Sonneville thought that France might tender him some protection he addressed the French consul at Caracas (December 12, 1888); then the Venezuelan-French Mixed Commission, which at that time was sitting here (April 6, 1890); then the minister for foreign affairs of the French Republic (May 8, 1890), requesting his help and advising the latter besides that if the intervention of his Government be considered unlawful he should forward the documents to the minister of foreign affairs of Great Britain with the view already mentioned. The request having purely and simply been denied by the French Government and the documents returned to Sonneville, the claim arises out of the hands of the present solicitors, not out of its own dust, as the Phœnix of the fable, but out of nothing—that is to say, out of a dedition in payment which is not contained in it.

In virtue of the reasons explained, it is the opinion of the Venezuelan Commissioner that the referred-to claim must be entirely disallowed.

VOLKMAR CASE.

Compensation can not be demanded for neutral property accidentally destroyed in the course of civil or international war.

BAINBRIDGE, *Commissioner* (for the Commission):

The claimant is a native citizen of the United States, residing in the city of Puerto Cabello, Venezuela. In the year 1892 he was the sole owner of the electric light plant of that city. On the 22d, 23d, and 24th of August, 1892, the forces of General Crespo, who was engaged in a revolution, ultimately successful, against the then existing government, attacked the city of Puerto Cabello, and during the engagement the power house, lines, lamps, and machinery of the claimant suffered damage amounting, as claimed, to the sum of 84,160 bolivars, for which sum, with interest, an award is asked.

The evidence presented in support of this claim is amply sufficient to prove the fact and nature of claimant's loss, but it fails to establish any liability on the part of the Government of Venezuela therefor. It is perfectly clear that the losses complained of were the result of military operations in time of flagrant war, and for such losses there is, unfortunately, by established rules of international law, no redress. Such losses are designated by Vattel as "misfortunes which chance deals out to the proprietors on whom they happen to fall," and he says that "no action lies against the State for misfortunes of this nature, for losses which she has occasioned, not willfully, but through necessity and by mere accident in the exertion of her rights."

As a principle of international law, the view that a foreigner domiciled in the territory of a belligerent can not expect exemption from the operations of a hostile force is amply sustained by the precedents you cite and many others. Great Britain admitted the doctrine as against her own subjects residing in France during the Franco-Prussian war, and we, too, have asserted it successfully against similar claims of foreigners residing in the Southern States during the war of secession. (Mr. Evarts, Secretary of State, to Mr. Hoffman, July 18, 1879. Wharton's Int. Law Dig., sec. 224.)

"The property of alien residents," says Mr. Frelinghuysen, Secretary of State, "like that of natives of the country, when 'in the track of war,' is subject to war's casualties." (Wharton's Int. Law Dig., vol. 2, sec. 224, p. 587.)

The rule that neutral property in belligerent territory is liable to the fortunes of war equally with that of subjects of the State applies in the case of civil as well as international war. In Cleworth's case, decided by the American and British Claims Commission of 1871, a claim was made for the value of a house destroyed in Vicksburg by shells thrown into the city by the United States forces during the bombardment. The Commissioners said: "The United States can not be held liable for any injury caused by the shells thrown in the attacks upon Vicksburg." And the same principle was applied in the case of James Tongue *v.* The United States to a claim for property destroyed by the bombardment of Fredericksburg on the 11th, 12th, and 13th days of December, 1862. (Moore Int. Arb., 3675.)

In view of the foregoing considerations the claim must be disallowed.

SUMMARY OF CLAIMS.

Number.	Name of claimant.	Amount claimed.	Amount disallowed.	Amount allowed with interest.	Remarks.
		Bolivars.	*Bolivars.*		
1	Ford Dix	85,182.00	23,630.85	$11,837.53	
2	Catalina and J. Antonio Páez	14,519.18	1,259.18	2,550.00	
3	Corina B. de Garmendia	578,732.07	425,941.98	29,363.64	
4	Coro and La Vela Railway Transportation Co.	325,503.36	7,758.92	61,104.70	
5	Ames Foundries	6,104.85			Withdrawn.
6	Emerich Heny	201,314.36	35,698.36	23,954.25	Award by umpire.
7	Boulton Bliss & Dallett	285,659.52	141,909.52	27,644.23	
8	Leonard B. Smith	37,684.24	22,456.92	2,928.33	
9	A. J. Stubbs	685.30	685.30		
10	John S. Emery Co	9,753.90	9,753.90		
11	American Electric and Manufacturing Co.	31,200.00	20,800.00	2,000.00	
12	Isaac J. Lasry	82,576.00	72,176.00	2,000.00	
13	Elias A. Flutie	416,000.00	416,000.00		
14	Emilia A. Flutie	111,800.00	111,800.00		Do.
15	G. F. Underhill and Jennie L. Underhill.	1,208,844.00 520,000.00	1,208,844.00 504,400.00	3,000.00	Do. Do.
16	Giovanni Turini	148,613.66	46,633.34	19,611.60	Do.
17	....do	5,250.00		1,150.36	
18	Kunhardt & Co	357,358.18	279,833.78	13,947.00	
19	Orinoco Steamship Co	7,288,007.16	7,141,237.52	28,224.23	Do.
20	William Quirk	978,273.75	878,859.73	18,154.61	
21	Nathaniel Jarvis	1,603,310.80	1,603,310.80		
22	Henry Woodruff	1,155,348.58	1,155,348.58		Do.
23	Heirs of Brion (Spader)				
24	Charles W. Torrey	52,000.00	50,700.00	250.00	
25	George E. Gage	70,400.00	69,980.00	100.00	Do.
26	W. B. Matchett	524,680.00	524,680.00		
27	Lorenzo Mercado	832,000.00			Withdrawn.
28	Felipe Scandella	41,600.00	41,600.00		
29	William H. Phelps	2,080.00	440.70	315.25	
		13,706.10	13,706.10		
30	Joseph Anderson, jr	195,104.00	195,104.00		
31	Caracas & La Guaira Cable Co.	1,490,320.00	1,490,320.00		
32	Thomson-Houston International Electric Co.	48,005.28	48,005.28		
33	Henry C. Bullis	260,000.00	260,000.00		
34	John Baptiste F. P. Monnot	1,074,741.82	1,050,343.01	4,692.08	
35	Creditors Ernesto Capriles	11,687.12	11,687.12		
36	George W. Upton	157,144.00	129,187.50	5,376.25	
37	Mauricio Berrizbetia	11,600.00			Do.
38	Virgilio del Genovese	720,702.09	356,269.00	70,083.28	
39	La Guaira Electric Light and Power Co.	7,819,598.38	7,805,768.41	2,659.61	
40	Henry T. Duke	55,760.00	55,760.00		
41	Sofia Ida Wiskow de Rudloff	3,698,801.00	3,304,927.00	75,745.00	Award by umpire.
42	George Crowther	10,220.00		8,138.75	
43	George W. Upton	525,000.00	525,000.00		
44	Pedro Miguel Parés	285,740.00	285,740.00		
45	George Turnbull	6,396,000.00	6,396,000.00		Do.
46	Manoa Company (Limited)	26,000,000.00	26,000,000.00		Do.
47	Orinoco Company (Limited)	6,916,000.00	6,779,576.00	26,620.00	Do.
48	Wm. H. Mundy	52,000.00	52,000.00		
49	American Electric and Manufacturing Co.	2,049,541.05	2,049,541.05		Do.
50	Lorenzo Mercado	1,581,834.64	1,581,834.64		Withdrawn.
51	Heirs Chas. Raymond	406,952.00	406,952.00		
52	W. H. Volkmar	84,160.00	84,160.00		Award by umpire.
53	Flanagan, Bradley, Clark & Co	914,160.00	914,160.00		
54	D. A. Le Lima & Co	364,000.00	364,000.00		
55	J. B. F. P. Monnot	3,312,400.00	3,312,400.00		
	Total	81,410,952.29	78,254,369.44	436,450.70	

Claims 13, 14, 22, 30, 35, and 44 dismissed without prejudice.

BELGIAN-VENEZUELAN MIXED CLAIMS COMMISSION.

PROTOCOL, MARCH 7, 1903.

Protocole d'un arrangement entre le Plénipotentiaire du Vénézuéla et le Plénipotentiaire de Sa Majesté le Roi des Belges en vue de soumettre à l'arbitrage toutes les réclamations du Gouvernement ou de sujets belges contre la République de Vénézuéla.

Le Président de la République du Vénézuéla et Sa Majesté le Roi des Belges ayant jugé utile de conclure le protocole mentionné plus haut ont nommé à cette fin comme leurs Plénipotentiaires: Le Président du Vénézuéla: Herbert W. Bowen, Sa Majesté le Roi des Belges: Le Baron Moncheur, Lesquels après s'être communiqué leurs pleins pouvoirs trouvés en bonne et due forme sont tombés d'accord sur les termes du Protocole ci-après et y ont apposé leur signature:

Article I.

Toutes les réclamations belges contre la République de Vénézuéla qui n'ont pas été réglées par arrangement diplomatique ou par arbitrage entre les deux Gouvernements et qui auront été présentées à la commission ci-après par le Gouvernement Belge ou par la Légation de Belgique à Caracas seront examinées et réglées par une Commission Mixte siégeant à Caracas et qui se composera de deux membres, l'un nommé par Son Excellence le Président du Vénézuéla, l'autre par Sa Majesté le Roi des Belges.

Il est convenu qu'un surarbitre pourra être désigné par Sa Majesté La Reine des Pays-Bas.

Protocol of agreement between the Plenipotentiary of His Majesty the King of the Belgians and the Plenipotentiary of Venezuela for submission to arbitration and payment of all unsettled claims of the Government and subjects of Belgium against the Republic of Venezuela.

His Majesty the King of the Belgians and the President of the Republic of Venezuela having deemed it expedient to conclude the above mentioned protocol to that end have appointed as Their Plenipotentiaries: His Majesty the King of the Belgians: Baron Moncheur, The President of Venezuela: Herbert W. Bowen, Who, after having communicated to each other their full powers found in due and good form, have agreed and signed the following protocol:

Article I.

All Belgian claims against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the Commission hereinafter named by the Belgian Government or the Belgian Legation at Caracas shall be examined and decided by a Mixed Commission which shall sit at Caracas, and which shall consist of two members, one of whom is to be appointed by His Majesty, the King of the Belgians, and the other by the President of Venezuela.

It is agreed that an umpire may be named by the Queen of The Netherlands.

Si l'un des deux commissaires ou le surarbitre venait à se trouver empêché de remplir ses fonctions ou résignait, son successeur serait nommé immédiatement de la même manière qu'il avait été. Les dits commissaires et le surarbitre devront être nommés avant le premier mai 1903.

Les commissaires et le surarbitre se réuniront dans la ville de Caracas le premier juin 1903. Le surarbitre présidera leurs delibérations et aura compétence pour trancher toute question sur laquelle les commissaires se trouveraient en désaccord.

Avant d'entrer en fonctions, les commissaires et le surarbitre préteront solennellement serment d'examiner avec soin et de régler avec impartialité suivant la justice et les stipulations de la présente convention toutes les réclamations qui leur seront soumises, et la prestation de ces serments sera consignée dans les procès-verbaux de leurs travaux. Les commissaires, ou dans le cas où ils se trouveraient en désaccord le surarbitre, trancheront toutes les réclamations sur la base de l'équité absolue, sans égard pour les objections d'une nature technique ni pour les dispositions de la législation locale.

Les décisions de la commission et, dans le cas où elle n'arriverait pas à une entente celle du surarbitre, seront définitives et irrévocables. Elles seront formulées par écrit. Toutes les attributions d'indemnité seront payables en monnaie d'or ayant cours légal en Belgique ou son équivalent en argent.

ARTICLE II.

Les commissaires ou le surarbitre, selon le cas, examineront et régleront lesdites réclamations exclusivement d'après les preuves ou renseignements fournis par les Gouvernements respectifs ou en leur nom, à l'appui ou en réponse

If either of said commissioners or the umpire should fail or cease to act, his successor shall be appointed forthwith in the same manner as his predecessor. Said commissioners and umpire are to be appointed before the first of May, 1903.

The commissioners and the umpire shall meet in the City of Caracas on the first day of June, 1903. The umpire shall preside over their deliberations and shall be competent to decide any question on which the commissioners disagree.

Before assuming the functions of their office, the commissioners and the umpire shall take solemn oath carefully to examine and impartially to decide, according to justice and the provisions of this convention, all claims submitted to them, and such oaths shall be entered on the records of their proceedings. The commissioners, or in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity without regard to objections of a technical nature or of the provisions of local legislation.

The decisions of the commission, and in the event of their disagreement, those of the umpire, shall be final and conclusive. They shall be in writing. All awards shall be payable in Belgian gold or its equivalent in silver.

ARTICLE II.

The commissioners, or umpire, as the case may be, shall investigate and decide said claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and

à toute réclamation et d'entendre toute démonstration orale ou écrite faite par l'agent de chaque Gouvernement pour chaque réclamation.

Au cas où ils ne s'entendraient pas sur telle ou telle réclamation le surarbitre décidera.

Chaque réclamation sera officiellement présentée aux commissaires dans un délai de 30 jours à partir du jour de leur première réunion, à moins que les commissaires ou le surarbitre n'étendent pour quelqu'une d'elles le délai de présentation de la réclamation. Ce nouveau délai ne pourra dépasser trois mois.

Les commissaires seront tenus d'examiner et de régler chaque réclamation dans un délai de six mois à partir du jour de sa première présentation officielle et, au cas où ils ne seraient pas d'accord, le surarbitre examinera et tranchera dans un délai égal à partir de la date où le désaccord aura été constaté.

ARTICLE III.

Les commissaires et le surarbitre tiendront des procès verbaux exacts de leurs travaux. A cet effet chaque commissaire désignera un secrétaire versé dans la langue des deux Pays, et chargé de l'assister dans les travaux de la commission. Les règles ci-indiquées mises à part toutes les questions de procédure seront laissées à la décision de la commission ou, en cas de désaccord, à celle du surarbitre.

ARTICLE IV.

Les commissaires et le surarbitre recevront pour leurs services et dépenses une compensation pecuniaire raisonnable qui sera, de

consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of or in answer to any claim, and to hear oral or written arguments made by the agent of each Government on every claim.

In case of their failure to agree in opinion upon any individual claim, the umpire shall decide.

Every claim shall be formally presented to the commissioners within thirty days from the day of their first meeting, unless the commissioners or the umpire in any case extend the period for presenting the claim, not exceeding three months longer.

The commissioners shall be bound to examine and decide upon every claim within six months from the day of its first formal presentation, and in case of their disagreement, the umpire shall examine and decide within a corresponding period from the date of such disagreement.

ARTICLE III.

The commissioners and the umpire shall keep an accurate record of their proceedings. For that purpose, each commissioner shall appoint a secretary versed in the language of both countries, to assist them in the transaction of the business of the Commission. Except as herein stipulated, all questions of procedure shall be left to the determination of the Commission, or in case of their disagreement, to the umpire.

ARTICLE IV.

Reasonable compensation to the commissioners and to the umpire for their services and expenses, and the other expenses of said

même que les autres dépenses du dit arbitrage payable par moitié par les parties contractantes.

ARTICLE V.

Afin de pouvoir payer le montant total des réclamations qui doivent être réglées comme il est dit plus haut, et celui des autres réclamations de citoyens ou sujets d'autres nations, le Gouvernement du Vénézuéla, à partir du premier mars 1903, mettra de côté à cet effet, par versements mensuels et n'affectera à aucun autre objet trente pour cent sur les révenus des douanes de La Guaira et Puerto Cabello, et les sommes ainsi mises à part seront partagées et distribuées conformément à la décision du Tribunal de La Haye.

Au cas où l'arrangement ci-dessus viendrait à n'être pas exécuté, des fonctionnaires belges seront chargés des douanes des deux ports et les administreront jusqu'à ce que le Gouvernement vénézuélien ait rempli les engagements résultant pour lui des réclamations susdites.

Le renvoi au Tribunal de la Haye de la question susindiquée fera l'objet d'un protocole séparé.

ARTICLE VI.

Toutes les dettes déjà reconnues en faveur de la Belgique et non encore entièrement payées seront promptement soldées conformément aux termes de chaque décision ou conformément à tout nouvel arrangement que le Gouvernement du Vénézuéla pourrait faire en vertu de l'article VI du Protocole signé le 13 Février 1903, entre Mr. Herbert W. Bowen et Sir Michael H. Herbert.

Fait à Washington, D. C., le septième jour de Mars, 1903.

arbitration, are to be paid in equal moieties by the contracting parties.

ARTICLE V.

In order to pay the total amount of the claims to be adjudicated as aforesaid and other claims of citizens or subjects of other nations, the Government of Venezuela shall set apart for this purpose, and alienate to no other purpose, beginning with the month of March, 1903, thirty per cent. in monthly payments of the customs-revenues at La Guaira and Puerto Cabello, and the payments thus set aside shall be divided and distributed in conformity with the decision of the Hague Tribunal.

In case of the failure to carry out the above agreement, Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of Venezuela in respect of the above claims shall have been discharged.

The reference of the question above stated to the Hague Tribunal will be the subject of a separate protocol.

ARTICLE VI.

All existing and unsatisfied awards in favor of Belgium shall be promptly paid, according to the terms of the respective awards, or according to any new arrangement that the Government of Venezuela may make in conformity with article VI of the protocol signed February 13, 1903, by Mr. Herbert W. Bowen and Sir Michael Herbert.

Done at Washington the seventh day of March, 1903.

HERBERT W. BOWEN. [SEAL.]
BARON MONCHEUR. [SEAL.]

PERSONNEL OF BELGIAN-VENEZUELAN COMMISSION.

Umpire.—J. Ph. F. Filtz.
Belgian Commissioner.—F. Goffart.
Venezuelan Commissioner.—Pedro Vicente Azpurúa, until July, 1903, when he was followed by—
Carlos F. Grisanti.
Venezuelan Agent.—F. Arroyo-Parejo.
Belgian Secretary.—Charles Piton.
Venezuelan Secretary.—Emilio de Las Casas.

OPINIONS IN THE BELGIAN-VENEZUELAN COMMISSION.

PAQUET CASE (Expulsion).

(By the Umpire):

The right of nation to expel foreigners from, or prohibit their entrance into the national territory is generally recognized, if they are prejudicial to public order; but when these measures are resorted to, the Government of such foreigners is entitled to know the reasons therefor, and if such explanations are refused, the act of expulsion is to be considered as arbitrary and indemnity must be paid to those expelled or prevented from entering.[a]

GOFFART, *Commissioner* (claim referred to umpire):

The claim presented by Mr. Paquet, because of his expulsion, contains five counts.

	Francs.
Direct damages, traveling and hotel expenses	50,000
Indirect damages, divided into three counts	230,000
Total	280,000

The Venezuelan Commissioner contends that the entire claim of 280,000 francs should be rejected because, in his judgment, Venezuela had the right to expel Mr. Paquet and therefore owes him no indemnity.

The Belgian Commissioner has renounced the indirect damages of 230,000 francs; he does not demand anything except direct damages, traveling and hotel expenses, etc., and these even he reduces from 50,000 to 4,500 francs.

The Belgian Commissioner does not dispute the right of expulsion invoked by Venezuela, so long as this right is a consequence of the right to protect the State; but by reason of this very fact it is important that it be employed to this end and to no other. The constant practice among European governments has been never to refuse to give to the representative of a nation of the party expelled the reasons which have moved the Government expelling him to exercise this right. The demand, therefore, that this be done in this case does not seem unreasonable.

The Government of Venezuela employed a measure of severity against the claimant. There is no proof that it took this course in order to protect itself in accordance with the line of conduct adopted by all the countries represented in Venezuela—Germany, England, the United States, Spain, Italy, France, the Netherlands, and Belgium.

The Belgian Commissioner must therefore consider it as unwarranted, and maintain the liability of the Government.

---

[a] See Boffolo case, p. 696, and Oliva case, p. 771.

This principle having been established, the Belgian Commissioner invokes it very moderately, demanding in lieu of the 280,000 francs claimed, the sum of 4,500 francs for the expenses of various kinds to which the claimant had been put by reason of his temporary expulsion.

GRISANTI, *Commissioner* (claim referred to umpire):

Mr. Noberto Paquet claims an indemnity from the Government of Venezuela because it prevented his wife in the first place (in August, 1902) and afterwards himself and wife (last June) from disembarking in the port of La Guaira. Mr. Paquet says literally:

> The act of preventing my wife in the first place and afterwards myself from entering Venezuela, after having allowed us to depart more or less freely, constitutes an unwarranted expulsion. This expulsion was carried out without formalities and without explanation of any sort.

And Mr. Paquet demands reimbursement for his expenses of travel, hotel, and maintenance in Trinidad of a family composed of six persons from the end of August and beginning of September, 1902, until the end of May and beginning of June, 1903; the expenses of moving, etc.

In the last session I expressed the opinion that said claim should be disallowed, because there is no convincing proof in the record of the facts which he alleges as the foundation of the claim, and because even if such proof did exist, since the Paquets are foreigners and are domiciled at Port of Spain, the Government of Venezuela exercised a perfect right in prohibiting them from entering the national territory, a right which publicists acknowledge and which governments assert and exercise.

The Belgian Commissioner accepted the claim for 4,500 bolivars. The Venezuelan Commissioner rejected it absolutely, alleging that, so far as he is concerned the question is not one of amount but of principle, and he expresses his regret that it was not possible for him to consent to a matter of that nature.

> A foreigner may be expelled from French territory by a simple administrative act, provided his presence appears dangerous to public order. (Law of Dec. 3–11, 1849, arts. 7–8.)

If hospitality imposes duties, he who offers it also imposes greater ones on him receiving it. He who accepts hospitality in order to more surely take advantage of and deceive his trusting benefactor loses his right to hospitality.

The right of expulsion with which the Government is armed against the resident foreigner who inhabits the French soil transiently or permanently is explained, therefore, by the violation of his duties as a guest whereby he has made himself culpable; but even if he had respected them, the measure of expulsion taken against him will, nevertheless, be found to be justified for high political reasons because of the rights of public policy with which the authorities are vested, for the public interest and for the national safety, which they alone are able to determine. (André Weiss, Elementary Treatise on Public International Law, p. 34; see also Pradier-Fodéré, Public International Law, vol. 3, No. 1857, p. 1078.)

Because of the reasons expressed it is the opinion of the Venezuelan Commissioner that the aforesaid claim should be absolutely disallowed.

FILTZ, *Umpire:*

The umpire having examined and studied the record, and considering—

That Mr. N. A. Paquet, a Belgian subject, domiciled in Caracas, claims the sum of 280,000 bolivars for damages, direct and indirect, traveling expenses and hotel expenses, because the Government of Venezuela prevented him from landing at La Guaira;

That the claim has been reduced by the Belgian Commissioner by the sum of 250,000 bolivars for indirect damages, and insisted upon only for direct damages, estimated at 4,500 bolivars;

That the right to expel foreigners from or prohibit their entry into the national territory is generally recognized; that each State reserves to itself the exercise of this right with respect to the person of a foreigner if it considers him dangerous to public order, or for considerations of a high political character, but that its application can not be invoked except to that end;

That, on the other hand, the general practice among governments is to give explanations to the government of the person expelled if it asks them, and when such explanations are refused, as in the case under consideration, the expulsion can be considered as an arbitrary act of such a nature as to entail reparation, which is aggravated in the present case by the fact that the attributes of the executive power, according to the Constitution of Venezuela, do not extend to the power to prohibit the entry into the national territory, or expelling therefrom the domiciled foreigners whom the Government suspects of being prejudicial to the public order;

That, besides, the sum demanded does not appear to be exaggerated—

Decides that this claim of N. A. Paquet is allowed for 4,500 francs.

PAQUET CASE (Concession).

(By the Umpire:)

If a person by reason of a permit from the Government is induced to spend time and money, he is equitably entitled to an indemnity, if the permit is revoked without sufficient reason.

GOFFART, *Commissioner* (claim referred to umpire):

In deciding to refuse all indemnity for the arbitrary taking away from the claimant of the waste waters of the Asylum of the Feeble Minded, the Commissioner of Venezuela stands upon two facts:

1. There was no concession.

2. If there were a concession, it was not made forever, as the claimant alleges, but for an undefined time only.

The Commissioner of Belgium maintains that Mr. Paquet has a right to an indemnity of 50,000 francs, which he claims, and he bases his opinion upon the following:

The document conceded by the municipal council is a document in proper form, engrossed upon sealed paper, which was executed in accordance with all the formalities required by law to guarantee the claimant against future eviction.

The municipal council employs in it the term itself *conceder* to express the right which it created in favor of Mr. Paquet.

There exists, therefore, a true concession, and, supposing that the term of it be undefined, the authorities lacked the right to revoke it without indemnity.

In order to convince one's self of this, it is sufficient to recall the facts of the negotiations before mentioned.

Sewage waters pollute the place, engender fevers, and injure the public health. This condition exists without anybody being able to find a remedy for it. An intelligent man arrives, whose laborious studies have prepared him to relieve this difficulty. He finds not only a means of rendering the place healthy, but even a method of transferring the evil existing into a font of benefit. Is it just, is it equitable that he should be allowed to apply his idea, guaranteeing him a benefit; that he should be allowed to undergo all the expenses of construction, that the people should profit by reason of the public health thus obtained, and that when the experiment is concluded, when the petitioner is about to profit from that idea, which until to-day has not been of benefit except as to the others, that he should then be deprived of his property without indemnity?

Nobody will sustain it. It would be to deny the modern laws concerning property in ideas.

GRISANTI, *Commissioner* (claim referred to umpire):

Mr. Noberto Paquet claims the payment of 100,000 bolivars because the Government of Venezuela has deprived him of the use of the waste waters of the asylum, formulating his claim in these terms:

On November 8, 1898, the municipal council of Caracas, considering a petition which I had directed to it and demanding the assurances and formalities requisite, conceded to me in perpetuity the use of the waste waters of the asylum of Catia to use for irrigating my plantation of Agua Salud.

This claim is based on two great errors into which Mr. Paquet has fallen, and, unfortunately, with him, the Belgian Commissioner.

Paquet thinks that the municipal council made him a perpetual concession, and the wording of the documents, relative to the matter, makes it manifest that it was neither a concession nor was it perpetual. The fact is, the municipal council sanctioned the following:

Resolved, That the petition of citizen Noberto Paquet be allowed, granting him the permission which he has asked, to make use for an undefined time of the waste waters which flow out of the asylum of Catia, running freely through the gulch of Agua Salud, conducting them by means of a pipe line to his plantation situated on the said Agua Salud.

As will be seen from the text of the resolution, the council gave to Paquet the mere *permission* to make use of the waste waters, etc.

A *permission* is essentially revocable, and can confer no rights on the person who obtains it, nor impose any obligation on the one giving it. It did not, therefore, constitute any juridic link between the municipal council and Mr. Paquet. That permission could have ceased legally at the moment when the council should consider it advisable to revoke it, and if one considers it from this point of view, he will cease entirely to believe that the permission was given for an *undefined time*, a condition which better shows, if that be possible, the perishable and revokable character of the permission.

The words "*temps indéfini*" and their equivalent in Spanish mean that the stipulation to which they refer has no fixed term and may cease at any moment.

I have demonstrated what I asserted at the beginning of this argument, that is to say, that the claim analyzed is based upon two errors, namely:

(1) That the *permission* to which the resolution refers confers a right upon Mr. Paquet.

(2) That the words *undefined time* signify perpetually.

Secondarily, I put forward the following considerations:

It does not appear, in a credible way, that the Government has deprived the plantation of Agua Salud of said waste waters because, aside from the fact that the letter from Sister Anacleta lacks authenticity, the claimant limits himself to formulating his demand in this vague and indefinite way:

> I succeeded, nevertheless, on account of my imperturbable tenacity, in maintaining in some sort of fashion the irrigation by the waste waters * * * until January, 1901. It was then that a high authority intervened in a decisive manner, which permitted the others to convert to their own benefit the waste waters upon the fields next to the asylum, a practice which is, on the other hand, very unhealthy.

Lastly, if the permission to use the waste waters conferred any rights it would have created a servitude in favor of the property, Agua Salud, and since this belongs to Mr. Emelio Franklin, it would not be Paquet but Franklin who would have the right to claim.

For the reasons expressed, it is the opinion of the Venezuelan Commissioner that the claim under consideration, which Mr. Paquet makes, should be disallowed absolutely.

FILTZ, *Umpire:*

The umpire having examined the record and considering—

That on November 5, 1896, at the request of Mr. N. A. Paquet, the municipal council of Caracas granted him the permission to make use for an undefined time of the waste waters which run out of the hospital of Catia and which flow freely by way of the ravine of Agua Salud, conducting them by means of a pipe line to his rural estate, "Agua Salud;"

That some time thereafter this permission was withdrawn from him;

That, in order to prove this fact, Mr. Paquet relies upon the letter of Sister Anacleta which is to be found in the record. This letter is not authenticated, as has been noted by the Commissioner of Venezuela; nevertheless, I accept its contents as the expression of the truth;

That it is superfluous to discuss the differences which might exist between a concession and a permission;

I do not even care to dispute the right to withdraw a permit of concession running for an undefined time; but when a permit is withdrawn from anyone, by virtue of which he has been put to expense and labor and accomplished a great public service, draining a part of the city in order to take advantage of his ingenuity, at the moment he was about to enjoy the results of his labor, and this in order that it may be of advantage to others, it would certainly be equitable to indemnify him.

Unfortunately for Mr. Paquet, from the aforesaid letter, which I ought to accept in its entirety as the truth, it is manifest that Mr. Paquet performed labor in the interior of the asylum in order to take this waste water which occasioned serious damage, stopping for several days the supply of drinking water which came from the canal Polvorin, which left the establishment entirely unprovided with water;

That Mr. Paquet himself has abused the permission which was granted him appears to him (the umpire) to be of sufficient weight to justify its revocation, and it is this fact alone that prevents him from allowing the claim.

Postal Claim.

(By the Umpire:)

Interest will not be allowed upon a claim, if it is not demanded in the claim itself.

Goffart, *Commissioner* (claim referred to umpire):

Article 33 of the Universal Postal Convention (signed June 15, 1897), a convention signed by almost all the nations of the world, and among others by Venezuela and by Belgium, says literally:

2. Payment of the accounts of transit expenses relating to a period of service must be effected with the least possible delay, and, at the latest, before the expiration of the first six months of the following period of service. In any case, if the office which has transmitted the account has not received during that period a correcting observation, the account is considered as duly accepted. This provision likewise applies to the uncontested observations made by one office relative to the accounts presented by another. When the term of six months has passed, the amounts due from one office to another office are subject to interest at the rate of 5 per cent per annum, dating from the day of expiration of said term.

3. The offices interested are, however, at liberty to make, by mutual agreement, arrangements other than those formulated in the present article.[a]

This text gives rise to no doubt, and in No. 2 a general rule is established; by No. 3 it is permissible that it be replaced by means of special agreement.

Has the term of six months allowed, at the end of which the expense of transportation that were due for the year 1898 should have borne interest, expired? Evidently.

Does there exist a special agreement which supersedes the general rule? It is possible that it will be alleged that the acceptance on the part of Belgium in July, 1900, of an arrangement for the extinguishment of the debt, by means of the series of monthly payments of 250,296 francs, since no interest has been mentioned, constitutes a tacit renunciation of interest, but the suspension of the payments in June, 1901, has annulled this tacit agreement.

If, therefore, there exists a part agreement that agreement has ceased to exist and the debt is governed by the general rule contained in article 2.

Therefore the Belgian Commissioner proposes the following award:

The Venezuelan-Belgian Commission decides that the debt for 8,249.36 francs, which the Government of Venezuela owes, is allowed.

(2) This sum shall be increased by interest at 5 per cent from June 1, 1901, until the day of payment.

Grisanti, *Commissioner* (claim referred to umpire):

The Commissioner of Venezuela has the honor to make the following observations:

In the claim for 8,249 francs 36 centimes for expenses of transportation of correspondence, the payment of interest has not been demanded upon that sum, and since it is indispensably requisite, in order that the Commission may take jurisdiction of and decide the claim, that

---

[a] U. S. Statutes at Large, vol. 30, p. 1691.

said claim shall have been made, it is clear in the present case that the Commission can not allow interest which has not been demanded.

In Article I of the protocol, signed at Washington on February 13 of the current year by the plenipotentiaries of Belgium and Venezuela, it says that—

> All Belgian claims against the Republic of Venezuela, which have not been settled by diplomatic agreement or by arbitration between the two Governments and which shall have been presented to the Commission hereinafter named by the Belgian Government or by the Belgian legation. * * *

Consequently, the payment of interest has not been claimed either by the Government of Belgium or by the legation of Belgium at Caracas.

Secondly, I make the following argument:

The cause which has prevented the Venezuelan Government from effecting the punctual payment of the sum named consists in civil war, which possesses the character of *force majeure* and excuses the payment of interest, in accordance with article 1191 of the civil code:

> The debtor is not obliged to pay damages if these are the consequences of an accident or force majeure, which has impeded him from refraining to do, or doing, that which he was obliged to do, or that he has done that which was forbidden.

For these reasons I am of opinion that there is no reason to demand the payment of interest with which the Belgian Commissioner has increased the demand.

FILTZ, *Umpire:*

The umpire having studied and examined the documents and the record and considering:

That, the demand for interest has not been presented in the claim itself;

That, besides it is contrary to the terms of the protocol;

For these reasons declares that the demand for interest made by the Commissioner of Belgium is disallowed.

COMPAGNIE GÉNÉRALE DES EAUX DE CARACAS.

DECISION ON JURISDICTION.

(By the Umpire):

Under the terms of the protocol, the Commission has jurisdiction to examine and decide the claim of a Belgian corporation, even though some of its stockholders may not be Belgians.

DECISION ON MERITS.

(By the Umpire):

The failure to perform a contract for the payment of certain bonds issued by the Government of Venezuela in payment for certain properties purchased of claimant gives the claimant a right to claim indemnity, even though the bonds were made payable to bearer.

Where the property conveyed was encumbered by a bond and mortgage, formal registration of a satisfaction of the mortgage can not in equity be demanded when the evidence clearly shows that all but a few of the mortgage bonds have been paid and the claimant is willing to amply secure the grantee against loss on account of the outstanding bonds. The objection to the payment founded on the above would be one of a technical nature, which is expressly barred by the protocol.

Evidence can not be introduced to show that bonds issued for the payment for property were delivered at 40 per cent of their nominal value where the contract of transfer expressly states that the bonds were issued at par.

(The allegations contained in the memorial sufficiently appear in the following opinions. This plea to the jurisdiction was the first step taken by the Venezuela Government in opposition to the claim.)

ANSWER OF VENEZUELA ON JURISDICTION.

To the Honorable Members of the Mixed Venezuelan-Belgian Commission:

The undersigned, agent of the United States of Venezuela, has studied the claim presented by the Compagnie Générale des Eaux de Caracas, and respectfully shows to the tribunal:

Before answering the claim upon its merits the undersigned must present to the consideration of the honorable arbitrators a preliminary objection which requires a previous decision.

By the protocol signed in Washington between the two Governments only the claims owned by Belgian subjects can be submitted to the decision of this honorable Commission; it is necessary, therefore, for the claimant company to prove that all the special bonds issued by Venezuela, as the price for the assets of the enterprise, are held by Belgian subjects.

The undersigned considers that this is an essential condition to give jurisdiction to the tribunal.

Moreover, the Government of Venezuela, in refusing to continue the regular payment of the special debt created to make payment for the aforesaid sale, has done so because it considers indispensable the fulfillment of a requirement to which the company is obligated by the internal law—viz, the cancellation of the mortgage which it made, by which it guaranteed the payment of 27,400 bonds at 500 francs each—because it is to be noted that when the enterprise was sold to the Government no mention of this incumbrance was made.

In case the honorable tribunal should consider the objection interposed without foundation, the undersigned will proceed to answer the claim, without any delay, upon its merits.

PRELIMINARY QUESTION AS TO JURISDICTION.

GOFFART, *Commissioner* (claim referred to umpire):

In his answer, dated July 18, 1903, the agent of the Venezuelan Government sets forth, incidentally, that if Venezuela has suspended the payment of the waterworks debt it has been because of a mortgage which ought to have been canceled according to local legislation.

It would be easy to meet this objection if the explicit prohibition which the protocol provides for recourse to local legislation did not render such refutation completely useless.

The true objection should be formulated thus:

By the protocol signed at Washington between the two Governments only claims owned by Belgians can be submitted to this Commission; it is therefore necessary that the company should prove that all the bonds issued by Venezuela in payment for the assets of the company are held by Belgian subjects. The undersigned considers that this is an essential condition to give jurisdiction to the tribunal.

In case this tribunal should consider the objection unfounded, the undersigned will proceed to answer the claim upon its merits without any delay.

This objection is magnified even more by the Venezuelan Commissioner, who demands not only that the company should prove that all the holders are Belgians, but also that it is the owner of the claim which it presents.

In order to refute the objection of the Venezuelan agent, it is sufficient to determine the nationality of the party claimant.

The Compagnie Générale des Eaux de Caracas is a corporation organized in Brussels on February 3, 1891, before Mase Van Halteren, a notary, as is shown by the copy of the Monitor, which is found in the record.

It is therefore a juridic Belgian person, and in that capacity submits to the Belgian-Venezuelan Commission the fact of the nonperformance on the part of the Venezuelan Government of a contract signed by both parties October 31, 1895.

If the objection of the Venezuelan agent had any merit, that is to say, if it were necessary to deny the benefit of a judgment favorable to the claimant, to all the bondholders who were not Belgians, with all the more reason would it have been necessary to claim in all the mixed commissions by separating the stockholders and bondholders of corporations which may have claims pending before them.

Very well, the claims of the German railway and the two English railways have been examined on their merits by the English and German commissions.

The objection to the jurisdiction made by the agent of Venezuela before the Commission is not, therefore, justified.

With respect to the exaggeration which the Venezuelan Commissioner has made, in seeking to make the claimant prove in advance that it possesses all the bonds of the debt issued; it arises from an imperfect idea of the foundation of the claim.

The claim of the company has not been made for the certain number of bonds of the waterworks debt which it may possess, but it has its origin in the contract of 1895, to which the company is a party, a contract which it has executed, and which the Government of Venezuela has not fulfilled; which has given to the first party a cause of action against the second, a right which it is exercising at this moment.

Therefore the proof that the company is the owner of its claim is the contract itself, the text of which and the nonfulfillment of which are undeniable.

Besides, it is well to note the manner in which the company has presented its claim.

The liquidators limit themselves in their memorial to proving the debt which the Government has contracted by reason of the negotiation concerning the waterworks, and have taken good care not to demand that the payment be made to them personally, leaving it entirely to the judgment of the Commission to decide if such a course should be taken or, if it deems it preferable, to make the debt payable to a sound financial establishment which it shall charge with the disbursement to all the bondholders; and consequently the Belgian Commissioner asks that, passing over the objections presented by the defendant, the Commission decide that it has jurisdiction and the claim is admissible.

GRISANTI, *Commissioner* (claim referred to the umpire on question of jurisdiction):

La Compagnie Générale des Eaux de Caracas claims the payment of 10,175,000 bolivars, represented by 20,350 bonds payable to bearer of the *special waterworks debt*, besides 2,967,708.33 bolivars interest on this debt from August, 1897, until June of the present year.

This claim is founded upon the following facts:

By the contract executed on October 31, 1895, La Compagnie Générale des Eaux de Caracas sold and transferred to the Government of Venezuela the contract which it had acquired for developing the distribution of water in Caracas, the ownership of all the works and installations, its properties, and the assets which it had against its creditors, all for the price of 10,792,440 bolivars in bonds of the special debt of the waterworks of Caracas, created by Executive decree of the aforesaid date, October 31, 1895.

This debt is similar to the consolidated debt at 5 per cent created by the law of public credit dated July 8, 1891.

The first and essential requisite which the company should fulfill, and which it has not fulfilled, is to prove in a convincing manner that it is the owner of the claim which it urges—that is to say, that it is the owner of the 20,350 bonds of the special debt which are still in circulation—or, at least, that the owners of these bonds are Belgian subjects, and as these bonds are payable to bearer it can not make other proof than the presentation of these bonds themselves.

These bonds are doubtless owned by individuals of various nationalities, and a great part of them belong to Venezuelan citizens.

Very well, the obscure and irregular manner in which La Compagnie Générale des Eaux de Caracas presents its claim would lead to the absurdity that this Mixed Venezuelan-Belgian Commission constituted to examine and decide Belgian claims—that is to say, claims of the Belgian Government or of Belgian subjects—should examine and decide a claim in which persons of many nationalities are concerned, and it would bring us to a still greater absurdity, if that be possible, if some Venezuelans should appear to be protected in their interests by His Majesty the King of Belgium. This would be a flagrant violation of Article I of the protocol, by virtue of which this tribunal has been created.

The Belgian Commissioner assumes that the Compagnie Générale des Eaux de Caracas has made itself liable with respect to the holders of the bonds of the debt, but besides the fact that this would leave in existence the absurdity already expressed in the foregoing paragraph, this act itself would go to demonstrate that the company is urging a claim which is not owned by it, that it is demanding the payment of a debt which does not belong to it, or at least does not belong to it to the extent of which it is trying to make recovery.

"En fait de meubles la possession vaut titre" is a principle sanctioned by article 2279 of the Belgian civil code, by article 1141 of the French civil code, by article 1126 of the Italian civil code, and by article 1100 of the Venezuelan civil code, and said principle applies to bonds payable to bearer.

568. Le principe que les créances peuvent être revendiquées reçoit exception quand elles sont constatées par des titres au porteur. Cela est admis par tout le monde; cependant le code ne parle pas plus de l'exception que de la règle, mais l'exception et la regle se justifient par les raisons qui ont fait établir la maxime qu'en fait de

meubles la possession vaut titre. Pourquoi la possession est-elle considérée comme un titre de propriété quand il s'agit de meubles corporels? Parce qu'ils se transmettent de main en main, sans qu'on dresse act de la transmission. Or, il en est ainsi des effets au porteur: le nom qu'on leur donne prouve que le payement doit être fait à celui que est porteur de l'effet; il est donc réputé créancier, c'est-à-dire propriétaire. Ainsi il n'y a aucune différence entre ces titres et les meubles corporels en ce qui concerne le mode de transmission, donc ils doivent être soumis à un seul et même principe.

La cour de cassation l'a jugé ainsi par un très ancien arrêt, sur le réquisitoire de Merlin. Dans l'espèce, il s'agissait de vingt-six récépissés d'un emprunt, conçus en forme d'effets au porteur. Ces effets avaient été acquis par une société de commerce; l'un des associés en disposa au profit d'une concubine; les associés les réclamèrent contre le possesseur. La cause de la défenderesse était on ne peut pas plus défavorable; le premier juge se prononça contre elle, mais sa décision fut réformée par le tribunal d'appel de Bruxelles. En principe, dit la cour, les effets au porteur sont réputés être la propriété de celui qui en a la possession, à moins que celui qui les revendique ne justifie qu'ils lui ont été volés ou qu'il les a perdus et qu'ils ont été trouvés par le possesseur. (Laurent, Principes de Droit Civil, vol. 32, p. 585.)

If the owner of a bond payable to bearer has not got the right to recover it from its actual possessor, except it may have been stolen or lost, how can it be just that the Compagnie Générale des Eaux de Caracas should claim from the Government of Venezuela the payment of all the bonds of the special debt of the waterworks of Caracas, without showing that it is the owner of all of these bonds?

The Compagnie Générale des Eaux de Caracas is not vested with any legal right to represent the bearers of the bonds of the waterworks debt nor does there exist between it and them any legal relation; and this being so, on what principle of equity and justice can it rely to demand the payment of the total sum of said debt?

The undersigned does not deny that the Compagnie Générale des Eaux de Caracas is a juridic person in so far as it is necessary to accomplish its liquidation, nor that its nationality is Belgian. What he denies is, that this company is owner of the claim which it advances.

For the reasons expressed it is the opinion of the Venezuelan Commissioner that the true creditors of the Government of Venezuela for the waterworks debt are the holders of the bonds; so that the Compagnie Générale des Eaux de Caracas ought to show that it is the legitimate holder of the 20,350 bonds, the payment of which it demands, or to limit its claim to the number of bonds which it has in its possession.

FILTZ, *Umpire:*

The umpire having examined and studied the documents in the record and considering:

That Article I of the protocol of Washington declares that the Commission has jurisdiction to examine and decide all Belgian claims against the Republic of Venezuela which have not been settled by diplomatic agreement between the two Governments, and which may have been presented to the Commission by the Belgian Government or by the legation of Belgium at Caracas;

That the present claim has not been settled by diplomatic agreement between the two Governments, and that it has been presented to the Commission by the agent of the Government at Caracas;

That the claimant company's Belgian character has not been disputed, and that it has not lost it, because among the holders of the

bonds which have been issued by the Government of the Republic persons of a different nationality are found;

For these reasons declares that the Commission has jurisdiction and orders that it proceed to decide upon the merits without delay.

ANSWER OF THE VENEZUELAN AGENT ON THE MERITS.

Honorable Members of the Mixed Venezuelan-Belgian Commission:

In conformity with the decision rendered by the honorable umpire of this Commission, deciding that it has jurisdiction to examine and decide the claim presented against the Government of Venezuela by the Compagnie Générale des Eaux de Caracas, the writer, as agent of the Republic, proceeds to make answer to the claim upon its merits.

By Article I of the contract entered into by the minister of hacienda and public works, duly authorized by the President of the Republic and by virtue of the authorization given by the National Congress on May 25, 1895, on the one part, and Noberto Paquet, as representative of the aforesaid company, on the other, the latter agreed to cede and transfer to the National Government all the rights vested in it by the contract entered into with the municipality of Caracas on July 11, 1900.

By Article III of said contract the National Government obligated itself to pay as the price of said transfer the sum of 8,625,800 bolivars in bonds of a special domestic debt, at 5 per cent per annum, at par.

By Article IV the company renounced all the rights which it had acquired by the contract of July 1, 1893, relative to the construction of a second pipe line from Macarao to Calvario for the sum of 3,000,000 bolivars which the company ought to have received on that account; and it also ceded the mains existing in Caracas, which it had begun to lay on account of said work, to the National Government, without the latter's having to pay for it, since the price of these was included in the 8,625,000 bolivars provided for in Article III.

By Article V the company also transferred to the National Government all the bills receivable which it held against its customers for water rates and for connections, as well as those against the municipal rents and the Government itself, for the price of 80 per cent of their original amount.

It was stipulated that to effect the payment for said assets, and after having ascertained them, the amount of said special domestic debt of which Article III speaks, and which was sufficient to cover them, should be offered at auction for cash.

By the sole paragraph of Article V the Government reserved to itself the right to buy from the company, at the inventoried price, all its materials in its warehouse not included in those mentioned in Articles II and IV, paying for them in the same manner established for the payment for the assets.

Later, availing itself of the right which it reserved by this article, the Government bought from the company said materials for the sum of 333,311.61 bolivars.

In accordance with the foregoing stipulations the Government issued bonds of the special domestic debt to the value of 10,729,199.44 bolivars in the following manner:

		Bolivars.
Price of the transfers agreed upon by Articles II and IV of the contract which the company made to the Government		8,625,000.00
Value of the assets, which according to the liquidation made by the minister of public works showed a balance due the extinct company at 80 per cent	471,598.09	
Value of the materials which the company had in its warehouses and which the Government bought in entirety as per inventory	333,311.61	
Total	804,909.70	
Estimating these amounts at 37.40 and 36.77 per cent, respectively, makes		2,167,199.44
Giving a grand total of		10,792,199.44

It is to be noted that the Government reserved itself the right also to which the company or its successors in interest also bound itself, to call in the bonds of said debt within the term of two years, paying it in gold at the rate of 40 per cent.

Afterwards the Government, by successive amortizations, diminished this sum to the amount of 10,175,000 bolivars.

For several years thereafter the Government was properly attending to the payment of this debt, when it learned that the property of the enterprise purchased was encumbered by a mortgage, of which no mention had been made in the deed of transfer, and foreseeing the possibility of the setting aside of the sale it ordered the suspension of the payment.

The liquidators of the company alleged that they had effected a cancellation of the 16,700 mortgage bonds for bonds of the debt issued by the Government of Venezuela, with the exception of eight, which might be considered as lost or destroyed, and that by this exchange, agreed to by the holders of the former preferred obligations, had extinguished, by means of the novation of security, the mortgage which guaranteed them.

The attorney-general of the nation, specially commissioned to treat this matter with Mr. Ferdinand Goffart, one of the liquidators of the company, accepted this view, but demanded at the same time the formal proof of the novation alleged, which could not be other than a delivery in the hands of the purchaser of all the preferred bonds called in.

The attorney of the liquidators did not consent to make this delivery except upon Belgian territory, to which the Venezuelan Government could not agree.

The payment of the 61,000 bolivars, which it is alleged in the memorial of claimants was demanded by the Government of Venezuela, was nothing but the equivalent of the registration fees, caused by the cancellation of the mortgage, a formality which ought to be complied with by the company, since it had sold goods which were not unencumbered, and according to the principles of civil law it was and is obliged to cure the defects of said sale.

The matter remained in suspense and has so continued until its presentation to this honorable Commission.

As will be seen, therefore, the fault of the company itself, the grantor, has been the motive for the suspension of the payments of the special debt, created by the Government of Venezuela to cover the price of the sale.

The agreement of October 31, 1895, remains to-day in full force and effect and the claimant can not demand anything but its strict fulfillment. The Venezuelan Government is disposed to accomplish this provided that the formality demanded be complied with. This proceeding is just and equitable.

With respect to the payment of interests on account of delay, which the company demands, the undersigned finds himself obliged to oppose it, since said delay was occasioned by a reason chargeable to the company itself, and was in obedience only to a reasonable and legitimate measure adopted by the Venezuelan Government for the security of its rights.

The writer has thus answered the claim of the Compagnie Générales des Eaux de Caracas, but at the same time he takes the liberty to call to the attention of the honorable arbitrators that it is a precept of international law, generally recognized by all civilized nations, that the recovery on obligations of bonds issued by a State should not give rise to international claims.

Lord Palmerston, in a circular letter addressed to the British foreign agents, in January, 1848, in effect maintains that to trust one's capital to a foreign government is to realize a speculation; to invest in loans made by foreign governments or to buy upon the exchange foreign bonds constitutes a mercantile or financial operation, as any other of that kind; the risk which is inevitable in this latter is also inseparable from the subscriptions to the loans of states; the creditors should never lose sight of the possibility of a bankruptcy, and they should not find fault except with themselves in case they lose their money. (Hall, International Law, 4th ed., p. 294, note.)

The same opinion has been sustained by the well-known publications of Rolin-Jaequemyns, a member of the Institute of International Law. (See Pradier-Fodéré, Public International Law of Europe and America. Vol. I, p. 620 et seq., par. 405.)

OPINIONS ON MERITS.

GOFFART, *Commissioner* (claim referred to umpire on its merits):

The umpire having ordered at the session of July 28th, that this case should be determined on its merits, the agent of the Venezuelan Government has set up his various defenses.

These go to show that the Venezuelan Government has suspended the fulfillment of the agreement of 1895 because of fears of eviction resulting from a mortgage which encumbered the real properties acquired; that this mortgage has been extinguished by novation, but that the Government requires the proof of this novation, demanding the delivery of the old bonds into the ministry of public credit in Caracas, after which the Government will resume the payment of the debt.

This argument has been rejected by common accord by the two Commissioners; thereafter, each one of them has stated the final opinion which he holds.

The Venezuelan Commissioner asks that the judgment order that the Compagnie Générale des Eaux de Caracas, in liquidation, should effect the cancellation of the mortgage which encumbers the real properties which it ceded to the Government and that, this formality hav-

ing been observed, the Government shall resume the payment of the special debt of the waterworks.

The Belgian Commissioner opposes the cancellation of the mortgage as useless, the rights growing out of the mortgage having already been extinguished, this objection becoming thenceforth "simply an objection of a technical nature" which the protocol precludes explicitly from being invoked.

It being established that the agreement of 1895 has provided for the sale on time, in which the vendor has fulfilled its obligations but the vendee has not proceeded in the same matter, the Belgian Commissioner demands that the time be declared lapsed, so far as concerns the Government of Venezuela, and that it be recognized as debtor in the sum of 10,565,199.44 bolivars.

Mr. Umpire, of all the claims submitted to the ten mixed commissions which are actually sitting in Venezuela not one is more simple, more evident, more incontestable than that which we submit to-day to your judgment.

In 1891, there was constructed, in this city, a system for the distribution of water. This system gave general satisfaction. Eight years ago the Government bought said water system, and since that time has received the considerable revenue which it produces.

It is six years since the company has hoped vainly to be paid. Such is the essential, undeniable fact which dominates the argument, a fact which will serve as a guide for your judgment.

I seek to establish in this opinion:

1. That the position of the company is unassailable in law.

2. That it is even less assailable in equity; and I shall terminate in formulating reasons which support the judgment which I propose, which judgment is the only one which can guarantee its legitimate rights to the claimant.

How is the claim of the company juridically presented?

We find ourselves confronted by a contract entered into on October 31, 1895, between the ministers of hacienda and public works on the one part and the representative of the company on the other. This contract was submitted to the ratification of Congress in 1896. In three successive readings it was discussed and approved by the Chamber of Deputies. In three successive readings it was discussed and approved by the Senate. It was regularly proclaimed. The consent of the contracting parties could not be invested with greater or more solemn formalities. The tie of the legal relation created by the agreement of 1895 is perfect, and does the Commissioner of Venezuela seek to deny it—

but [says he] a mortgage encumbered the real properties of the company. This mortgage is yet recorded in the public register; to comply with Venezuelan law the Government ought, therefore, to be released, after which the agreement would again assume its force. [a]

It is noted by the Commissioner of Venezuela that his opinion is in formal contradiction to the attitude assumed by the Government itself after the proclamation of its decree for the suspension of payment. On September 28, 1897, Doctor Grisanti, then the legal adviser of the company, announced to it that the Government had suspended its payment, alleging the poverty of the treasury, and purposed to resume

[a] Summary from opinion; see p. 288.

it as soon as its resources would permit (and they have never permitted it).

It was not until three years later, in 1900, when, perceiving the necessity of justifying its course in one way or another, the Government charged its councilors to give a juridic explanation of its conduct.

After a protracted examination they only find one way to arrive at it. The following decree appeared in the Gaceta Oficial of November 30, 1900 (see Exhibit No. 1):

UNITED STATES OF VENEZUELA,
MINISTRY OF THE TREASURY AND PUBLIC CREDIT,
Caracas, November 30, 1900.

Resolved, In view of the communication which the citizen minister of public works has addressed to this department, in which he asks that the resolution which is in conformity with civil law be taken, and which he proposes as a safeguard for the rights of the National Government, because of the existence in the office of the public register of this capital of a recorded mortgage on all the properties, rights, and actions of the Compagnie Générale des Eaux de Caracas, prior in date to the sale which it made of them to the Government, and considering:

That from the documents submitted by the minister it appears really that the mortgage was made on June 25, 1891, by Mr. H. E. Boyer, representative of the aforesaid company, upon all its properties, rights, and actions; and that it appears, furthermore, that that mortgage has not been taken up, which causes the National Government to fear a future injury by eviction from the property sold on October 31, 1895, the supreme chief of the Republic resolves:

To suspend from this day the payment of what may be owed to this company with respect to the purchase price, or with respect to the extinguishment of and the payment of interest on the special domestic debt of the waterworks of Caracas until the vendor shall have removed the danger, or until it may give a sufficient guaranty, in accordance with the tenor of article 1475 of the code.

Let this be declared and published by the National Executive.

R. TELLO MENDOZA.

Now then, what does article 1475 of the civil code say? It is the reproduction of article 1653 of the Belgian and French codes, which is expressed in these terms:

ART. 1653. If the purchaser is disturbed, or has a just motive for so fearing, by an action, be it on account of a mortgage or be it on account of recovery, he can suspend the payment of the price until the vendor has removed the cause of disturbance, if he does not prefer to give bond, unless it has been stipulated that notwithstanding the disturbance the purchaser shall pay.

Here there has never been any disturbance of possession. The company furnishes authentic proof that all the mortgage bonds, except eight, have been canceled. It offers to deposit in the bank which may be designated 4,000 francs as security, which shall serve to take up these eight bonds at par, which it has not been able to find.

It has, therefore, complied in every way with provisions of the article invoked by the Government. The Government is in no sort of danger. It is a fact to be noted that in making the decree of 1900 the Venezuelan jurists had arrived at a conclusion identical with that reached by the Belgian lawyers.

The noteworthy opinion of Mr. van Dievoet, which is to be found in the record, should be cited in full, but I will quote only the passage most pertinent:

The only guaranty which the Venezuelan Government, now actually the possessor of the property which had been mortgaged in favor of the bondholders, could demand is the proof of the return of these obligations to the possession of the company which had issued them and their cancellation, no matter how they had been acquired, as, for example, by documentary evidence of their return and cancellation.

Therefore, there is an identity of opinions. According to the view

of the Venezuelan Government, as well as that of Mr. van Dievoet, the proof of the cancellation of the bonds is all that we can ask.

The company has furnished it, invested with the character of absolute authenticity. Thenceforth, by the terms themselves of the decree of the President of the Republic, Venezuela ought to resume the execution of the agreement of 1895.

I have, therefore, demonstrated that the action is unassailable in law, even if the example of my honorable opponent did not pass that point, but I have imposed upon myself, in the course of the labors of this Commission, the obligation of examining the claims upon a basis of absolute equity. It is my duty to do it here also.

Does the agreement of 1895 create a legal relation juridically unassailable? No doubt; but is it clearly so in equity? In other words, is the purchase made by the Government well worth the sum which it promised to pay for it? I state without hesitation that it is.

By the agreement of 1895 the Government acquired:

1. The rights owned by the company by virtue of its municipal contract of July 11, 1890, for the exploitation and distribution of water and the construction of a system of sewers.

2. All the works and installations which it had constructed, such as they were at that time—that is, in perfect condition and operation.

3. The right to construct a second main from Macarao to Caracas (contract July 1, 1893) for the sum of 3,000,000 francs, as well as all the pipes at that time brought to Caracas for this purpose.

4. All the bills receivable for water rents at that time owed by individuals or by the authorities.

5. All the supplies of material in the warehouse at an inventory price.

And what did all this represent? That is what we have to show.

Let us take up now the first contract of July 11, 1890.

In the execution of this contract the company took up and exploited the following supplies of water: Macarao, which furnishes 120 liters per second; Catuche, 20 liters per second; total, 140 liters per second, or 12,000 cubic meters per day.

The company was obliged to furnish gratuitously to the municipality 1,000 cubic meters. There remained for sale 11,000 cubic meters per day. The water system has on the average 5,000 customers, who, according to article 15 of the contract, should receive for 100 francs per year 1½ cubic meters per day, or, say, 7,500 cubic meters, equal to 500,000 francs. There remained 35,000 cubic meters in excess, which were sold at the very remunerative price of 50 centimos per cubic meter.

It is to be noted that public establishments, hospitals, offices, hotels, etc., should be served with water all day, and that the excess supply was always consumed.

	Bolivars.
On this account there would be a profit of 35,000, at 50 centimos per cubic meter	638,750
More than 5,000 francs already received	500,000
Total	1,138,750

Besides it had a commercial business of sanitary installations, which was worth 60,000 francs per year. It had commenced the construction of sewers (2 kilometers were constructed), and according to the terms of article 17 of the contract the houses of Caracas were obliged to connect themselves with this system and to pay on this account 4 francs per meter of frontage.

Estimating the number of houses at 8,000, and the average frontage at 8 meters, we have a profit of 256,000 francs. Total profits, 1,454,750 francs.

Now, then, according to the last publication of the Government, the expenses of operation did not exceed 57,300 francs. Increasing considerably this sum, and estimating it for the water service at 100,000 francs, and for the sewer system at 200,000 francs, it is found that the expenses would be 300,000 francs; net profits, 1,154,750 francs, which the first contract would have produced if the Government had fulfilled its promises.

But there is a second contract, that of July 1, 1893, by which all waters which might be conducted by means of a second pipe line which was to be constructed should belong to the company. That is to say, 10,000 cubic meters per day or more, which the company was to sell at the excess rate, or 50 centimes per cubic meter annually, producing 1,825,000 francs. Total from both contracts, 2,979,500 francs. And the Government, 200,000 francs.[a] Net profits per year, 2,779,500 francs.

Such are the benefits which the company ought to have realized by virtue of the two excellent contracts which it possessed. Even reducing these profits to one-half, say to 1,500,000 francs, if it be considered that the contracts were for forty years, it will be seen what a prosperous business the company had.

These rights—this business—were what the Government acquired.

After the detailed account which I have just made it will not occur to anybody to say that the rights ceded were not worth much more than the sum of 10,792,199.44 francs which was demanded.

I refrain from giving the reasons which have brought me to this conclusion.

The contract signed in Caracas in 1895 between the Government and the company transferred all its real estate, rights, and actions. These should have been paid for by a certain number of monthly installments of 50,000 francs each:

1. The net profit in the exploitation of the water system;
2. The excess from the various reserves, or portions of the revenue, destined for the payment of the national domestic debt of 6 per cent.

What has the Government done with these revenues freely set aside?

Exactly nine months after the signing of the contract it simply suppressed the second by its law of July 16, 1896, by which law the Government divided its revenues among all its creditors, and no mention was made of the company, just as though it did not exist.

Now, this second guaranty was one of the most important. By the last report published (1901–2) it had yielded a sum of 1,439,000 francs, sufficient in itself to pay off the whole debt in seven years.

The first guaranty still remained—the net profit of the waterworks system.

We have shown how, after six years, the Government had kept it entirely for itself, alleging the poverty of the treasury, but in this respect also an official document exists which shows the application of this guaranty to other purposes to the loss of the company.

---

[a] The increase ought to be compensated by the increase in the consumption of public establishments.—Goffart.

By an agreement dated April 24, 1903, entered into between the minister of public works and Mr. Llamozas, the system of waterworks had been granted to Mr. Llamozas without one word being said concerning the prior obligations toward the company, without any more mention being made of it than if it did not exist.

There had been a promise of payment made with the express mention of the resources to be applied thereto. The promise of payment has not been kept. Two official acts have ceded to others the guaranties given to the company.

It is not possible to find a more complete or flagrant breach of a contract.

The Belgian Commissioner asks that judgment be rendered against the Government, and that the debt be declared demandable for the sum of 10,565,199.44 francs.

In brief, the claim of the Compagnie Générale des Eaux de Caracas is so evidently just that it does not seem to leave room for discussion.

The Venezuelan Commissioner has not so considered it. He has sought to confine me to my rights at law, and the law supports my reasoning.

The cause has been submitted to the infallible contest of computation, and the computation shows my right.

From this double proof the proposition, which I announced at the commencement of this argument, is shown with more force—"of all the matters submitted to the examination of the ten mixed commissions, which are actually sitting in Venezuala, not one is more simple, more evident, more incontestable than that which we submit to your judgment."[a]

GRISANTI, *Commissioner* (claim referred to umpire on its merits):

By a resolution of the National Congress, adopted May 25, 1895, the national Executive was authorized to bring to a close a negotiation instituted with the Compagnie Générale des Eaux de Caracas, for the purpose of acquiring the rights which said company had in the enterprise, and to substitute in the control thereof the Government of the Republic. (Doc. 260, Rep. of the Min. of Public Works, 1896, Vol I, p. 199.)

Therefore the citizen minister of the treasury appointed a commission to examine the matter, composed of Messrs. Augustin Alveledo, A. Valarino, S. A. Mendoza, José Herrera, and Antonio Vallero Lara, all persons of the highest integrity in this city, who made a report under date of the 20th of May which is copied below:

Bearing in mind the request which you have been pleased to make of us, and being desirous to contribute and to the extent of our good will, to give you a patriotic solution to the question which you have submitted to our judgment, we fulfill our duty in saying to you:

1. That what seems most to conform to the interests of the municipality would be to compel the company of waters and sewers of Caracas to strictly fulfill the original contract in all its parts; but taking into consideration that the modifications afterwards made would place the company in a situation which, though in itself false, would nevertheless enable it to maintain a more or less extended lawsuit, we are of

---

[a] With this opinion several exhibits were submitted:

I. Extract from the Gaceta Oficial, November, 1900, showing resolutions concerning the mortgage on record in public register's office.

II. Record showing the cancellation of mortgage bonds.

III. Statement showing expenses of operation of the water company.

opinion that the rescission of said contract would be the most fitting step that could be taken in order to prevent new dangers from arising against the sacred interests of the community.

2. We believe that the rescission of the contract, and of the one made with the Government for the construction of a new pipe line, ought to be effected on a basis of equitable indemnity composed thus:

(*a*) Of the sum total which the expenses actually realized and incurred by the company in the new works would reach, calculated by experts.

(*b*) Of the sum which the company may have paid in cash to obtain the contract; and

(*c*) Of the sum which in reason ought to be allowed as a remuneration for its works.

3. The sum total thus being fixed which the Government ought to pay to the company on account of rescission, we believe this ought, by preference, to be effected in cash, or, if the condition of the public treasury does not permit it, by a special debt at a moderate rate of interest; since, in the manner indicated in the agreement, which is in bonds of the national debt 6 per cent interest at 40 per cent of their nominal value, we find that every new issue of a debt already created would be contrary to sound economic principles, which would depreciate the value of the floating debt in a severe manner, causing grave injury and which, financially, would burden the public treasury with a very high rate of interest of 15 per cent per annum upon the sum paid.

By a resolution of the minister of public works, dated May 29, Mr. José Herrera y Irigoyen, who was a member of the commission before mentioned, was named to discuss with the representive of the company the details and conditions of the contract, which had to be made, and afterwards Dr. Jorge Nevett, an engineer, was named for the performance of said duty in conjunction with Herrera y Irigoyen who, after several conferences with the representative of the company, Mr. Paquet, addressed to the minister of public works a communication and resolution which appear in the exhibits A and B.

The aforesaid documents proved in a most evident manner that the Compagnie Générale des Eaux de Caracas, by means of its duly authorized representative, Mr. Noberto Paquet, refused to accept the price in gold which would have completed the negotiation with the Government of Venezuela, preferring to accept it in the special debt, and thus the company entered into a speculation in the public debt of Venezuela, engaging in a sort of speculation, risky in the extreme, and the adverse consequences of which it now desires to recover from the Republic.

By the contract of October 31, 1895, the Compagnie Générale des Eaux de Caracas ceded and transferred to the Government of Venezuela all the rights and actions which its contract conferred upon it, in the terms which appear in Exhibit No. 3, for the price of 8,625,000 bolivers in bonds of a public debt created to that end—all of which appears in article 3 of said contract of transfer, which reads as follows:

ART. 3. As a total price of this transfer the National Government shall pay the Company the sum of eight million six hundred and twenty-five thousand bolivars (8,625,000), which shall be made in bonds in the special domestic debt of 5 per cent per annum at par. The issue of this debt shall be made in the manner prescribed by the decree of this date.

By article 5 of the contract the company transferred also to the National Government its bills receivable against its consumers at 80 per cent of their nominal value, a concession which should also be paid for in said debt.

By virtue of the Executive decree of October 31, 1895, a national debt was created which was called Deuda Especial Interna de las Aguas de Caracas, with interest at 5 per cent per annum, and which

was included in the debts which constitute the public internal credit of Venezuela.

The regular payment of this, as well as all the other debts, was interrupted because of the civil war, and as the Government afterwards discovered that the goods, rights, and actions which the company had sold it had been mortgaged, it officially suspended the payment of interests which it owed to the company, the Government relying upon article 1475 of the Civil Code of Venezuela, which is identical with article 1653 of the Civil Code of Belgium, and which reads as follows:

Si l'acheteur est troublé, ou a juste sujet de craindre d'être troublé, par une action, soit hypothécaire, soit à la revendication, il peut suspendre le payement du prix jusqu'à ce que le vendeur ait fait cesser le trouble, si mieux n'aime celui-ci donner caution, ou à moins qu'il n'ait été stipulé que nonobstant le trouble l'acheteur payera.

So far the history of the negotiation. Let us pass to a detailed examination of the different points which it embraces.

When the Government of the Republic demanded the cancellation of the mortgage, the company definitely acknowledged the duty which it was under to satisfy said demand, in a note addressed by Mr. Goffart to the attorney-general of the nation, which reads as follows:

CARACAS, *March 11, 1901.*

YOUR EXCELLENCY: I have the honor to notify you that I am authorized by the three liquidators of the Compagnie Générale des Eaux de Caracas to raise the mortgage which encumbers the enterprise of the waterworks and its real estate. Be kind enough to let me know what the Government will do as soon as this mortgage shall be legally satisfied.

By the intercession of this same representative and by a note dated August 20, 1901, the company definitely denied said obligation, which it had, in the above note, so definitely and categorically acknowledged, alleging for such a refusal that the mortgage had been extinguished by the creation of a new security.

You have here the text of the argument contained in a note addressed to the attorney-general of the nation on August 29, 1901:

Ainsi que vous ne l'ignorez pas, Monsieur le Procureur-Général, la Compagnie Générale des Eaux de Caracas en cédant son capital social au Gouvernement du Vénézuéla, et en obtenant l'adhésion de tous les obligataires qui ont échangé les obligations primitives contre le titre de rente vénézuélienne, a opéré aux termes de l'article 1271, page 2 du code civil belge (d'accord en cela avec le code vénézuélien), novation de créance par substitution d'un nouveau débiteur à l'ancien qui est déchargé par le créancier, c'est-à-dire dans l'espèce par tous les obligataires, la novation, vous ne l'ignorez pas, emporte extinction de l'obligation primitive qui est remplacée par la nouvelle dette. Cette extinction est si complète que même les privilèges et hypothèques afférents tombent de plein droit. Il ne saurait y avoir de doute à cet égard; l'article 1278 du code civil est formel; il dit: "Les privilèges et hypothèques de l'ancienne créance ne passent point à celle qui lui est substituée, à moins que le créancier ne les ait expressément réservés."

To answer such a strange argument it is sufficient for me to say, that, in the opinion which the company then entertained a substitution of the debtor had been effected by substituting the Venezuelan Government for it in the obligation to pay the mortgage debt; but such a concept is entirely without foundation. In fact, such a substitution could not have been effected unless the Government should have consented to assume said obligation of the company, and this consent has not been shown.

Now the company alleges that the mortgage has become extinct because of confusion, an argument weak in the extreme, because such an extinguishment is consummated when the mortgage creditor

becomes the owner of the property mortgaged, and in the present case the holders of the mortgage bonds issued by the company have that character, and the owner of the real estate mortgaged is the National Government.

Now the Belgian Commissioner has presented me with a notarial certificate going to prove that the liquidators of the company have annulled and canceled all the bonds except eight, which have not been presented to it.

The only proper and correct method of canceling the mortgage is to register the document of cancellation in the subordinate office of the register of this department, and this for the following reasons:

(1) Because it is thus provided in the Venezuelan law, the only one applicable to the case, the law of Belgium being similar to it. (Law of December 16, 1851, article 92 to 95, both inclusive.)

(2) Because, in conformity with the legislation of Venezuela, real estate situated in the Republic is governed by Venezuelan laws. (Art. 8, Civil Code.)

(3) Because in Venezuela and in all nations the laws which establish the requirements for the constitution and cancellation of mortgages are matters of public policy.

Let us proceed now to examine the claim of the company.

The first thing that arrests the attention in examining the claim of the Compagnie Générale des Eaux de Caracas is that the company does not formulate concretely and concisely the claim which it seeks to bring forward, limiting itself to setting forth in the conclusion of its memorial, as follows:

> The total amount of the special debt of the waterworks of Caracas, created by the decree of November 2, 1895, was 10,792,199.44 bolivars, represented by 21,584 bonds of 500 bolivars each; and the script or coupons 199.44 each, which we leave aside. On the 1st of January, 1901, according to the Yellow Book, the amount which we could claim was reduced in accordance with the demand made to 10,175,000 bolivars, represented by 20,350 bonds. The interest in arrears amounts on the 1st of June next to 2,967,708.33 bolivars, according to the account in Exhibit No. 6, which brings the total amount of the debt to 13,142,708.33 bolivars.

Nor does the agent of the Belgian Government specify the demand, limiting himself in the note which he addressed to this Commission on June 18 last to presenting the claim of the company in Belgian gold or its equivalent in silver for 10,000,000 bolivars, a claim which the undersigned rejects absolutely; wherefore the decision of this matter has been submitted to the umpire, to whom the writer has the honor to address himself.

After all it must be borne in mind that the company has not fulfilled the first and prime requisite of every claimant, which is to prove in a convincing manner that it is the owner of the claim which it presents; that is to say, that it is the holder of all the bonds of the waterworks debt which still remain in circulation.

This point the writer had the honor to submit at a previous session to Mr. Filtz, the umpire, who reserved his decision on it for a future occasion.

To-day the writer can say that it is absolutely impossible for the company to furnish that proof, because it is not the owner of all the debt, as is shown most clearly by the paragraph of the memorial of its liquidators, which reads as follows:

> On the 1st of June, 1901, according to the Yellow Book, the amount which we could control was reduced, on account of payments effected, to 10,175,000 bolivars, represented by 20,350 bonds.

And this is also shown by the certificate of the manager of the Bank of Caracas, which I present (Exhibit C), which proves that the said institution is the owner of 100,000 bolivars' worth of the waterworks debt, and has on deposit from divers persons, none of whom is the company, nor a Belgian subject, 52,500 bolivars' worth.

If the company were the holder of all the waterworks debt, the payment of which it demands, it could have set out exactly the payment made, of which the Yellow Book of 1901 speaks, and there would not be found in the Bank of Caracas the 152,500 bolivars of bonds of which the certificate of Manager Breca speaks.

This is sufficient to demonstrate the justice of my opinion in maintaining that bonds payable to bearer ought not to be the subject of an international claim, and in case they were, that only their actual holders could demand their payment.

This evidently proves also the gross inaccuracy of the company in demanding the payment of a public debt which does not belong to it, in its entirety, and without proving even that it is the owner of a part of it. Such a claim, if it should be declared well founded, would perpetrate a flagrant injustice against the Republic of Venezuela.

Let us now enter upon another class of considerations.

By the contract of October 31, 1895, the company ceded and transferred to the National Government all the rights and actions which it had acquired by its original contract of July 11, 1890, for the exploitation and distribution of the waters of Caracas, all the rights and actions ceded to it by its contract of July 1, 1893, for the construction of a new pipe line from Macarao, and the bills receivable which it held against its patrons.

The price of all these grants was fixed in the conferences previous to the negotiation at 3,000,000 bolivars in gold, but Mr. Noberto Paquet at that time representative of the company, refused to receive payment in gold, expressing himself in these terms:

> I find all the details of the operation satisfactory; but I find myself obliged to make the following observation, referring to Article II: "Not being able to accept the payment in gold, it is also useless to accept the sum of 3,000,000 bolivars which, on the other hand, I insist does not cover the value of the property of the company."
>
> This amount depends upon the rate of interest which is fixed upon the debt in question.

The payment of the grant and the transfer were made, therefore, to the company in bonds of a debt especially created with this object, and which was called the special debt of the waterworks of Caracas, which the company received at 40 per cent of its nominal value, which raised the total price of the bonds to 10,792,000 bolivars.

The foregoing, which is evidenced by convincing documents, shows that the Compagnie Générale des Eaux de Caracas refused definitely to permit payment in gold, a payment which would have terminated once and for all its negotiation with the Government, and preferred to receive it in bonds; the company thus entering into a speculation in the public debt of Venezuela and running the risks inherent in this speculation.

The company counted on easy gains. It received 8,000,000 and odd bolivars in bonds at 40 per cent for what was valued at 3,000,000 bolivars, and considering the prosperity of Venezuela at that time it hoped, with reason, that that debt, if it did not reach par, would at least be quoted at 50, 60, or 70 per cent.

The company did not count, and nobody counted, on the depreciation of price in our export products, especially coffee, nor upon the revolutions which have devastated the country; and taking undue advantage of this Mixed Commission it demands the extortion that it should be ordered paid 13,142,708.33 bolivars in Belgian gold or its equivalent in silver; that this Mixed Commission should make the transaction more profitable than the company ever dreamed of.

But this can never be, because it involves the most flagrant violation of the protocol which provides, in Article I, that in case of the disagreement of the Commissioners, the umpire shall decide all claims upon a basis of absolute equity.

As has been shown, upon the Government of Venezuela paying the price of the transfer in bonds of the special domestic debt of the waterworks of Caracas—a debt included in the public internal debt of Venezuela and subject to the law of July 8, 1891, every juridic tie between the Government of Venezuela and the company ceased, since the latter received the price in money which the contracting parties had stipulated; and the obligations which the Government contracted by the Executive decree, made on October 31, 1895, only established a juridic relation between the Government of Venezuela and the holders of the bonds of that debt.

In any case the company, no longer as an assignor of these contracts, but as a holder of the part of that debt, would only have the right to demand from the Government of Venezuela the strict fulfillment of the duties which said decree imposed upon it, that is to say:

Articles 1 and 2: To pay, in quarterly installments falling due from the 15th to the 25th of February, May, August, and November of each year, the interest of the special domestic debt of the waterworks of Caracas.

Article 3: That 50,000 bolivars monthly was fixed as the amount of the payment of the interest and extinguishment of the special domestic debt of the waterworks of Caracas. Of this amount there should be offered every six months at auction the surplus which may remain after the payment of the interest corresponding to the half year.

Article 4: The auctions with which the foregoing article deals shall be conducted on the 15th of July and the 15th of December each year, or as soon thereafter as possible, if either of these dates should fall on a legal holiday, and concerning them all the provisions established by the law of July 8, 1891, should be observed.

Sole article: It is within the power of the National Executive to raise the amount which must be offered at auction every six months.

In view of the reasons expressed it is the opinion of the undersigned:

1. That the Compagnie Générale des Eaux de Caracas is under the strict obligation of canceling the mortgage which it placed upon all the real estate of the waterworks company, by a document recorded in the register of Caracas on June 25, 1891, and that that cancellation must be made in conformity with the law of Venezuela; that is to say, in the same form which the mortgage was made.[a]

2. That it would be a scandalous violation of the protocol, by virtue of which this Commission is constituted, to oblige Venezuela to redeem in gold at its normal value the waterworks debt, which was issued at 40 per cent of said value by an agreement between the Government of Venezuela and the company.

3. That the only right which the company has to the bonds of the waterworks debt, of which it is the holder, is to exact the strict fulfill-

[a] The company seems to have refused to record the release of the mortgage in the public register's office because of an exorbitant fee proposed to be charged.

ment of the Executive decree of October 31, 1895, which created said debt; that is to say, the reestablishment of the quarterly payment of interest and the semiannual extinguishment of the debt, and that therefore that right is the only one that ought to be upheld by a judgment based upon the principles of equity and justice.[a]

FILTZ, *Umpire* (decision on the merits):

The umpire, having studied and examined the documents and arguments in the record, and considering:

That as a result of the contract made on October 31, 1895, the Government of Venezuela has constituted itself the successor in interest to all the real estate, rights, actions, bills receivable, and supplies in the warehouse of the Compagnie Générale des Eaux de Caracas, in liquidation;

That by reason of its acquisitions it has acknowledged that it is indebted for the sum of 10,792,199.44 bolivars;

That by said contract of October 31, 1895, and the decree thereto annexed, it has promised to pay the interest and extinguishment of this debt at the rate of 50,000 bolivars per month;

That after having entered into this contract and after having paid, by way of extinguishment, a part of this debt for a certain space of time the Government suspended all payment; considering:

That by reason of the differences relative to the requisite proof that the company owns all the bonds which were delivered to it in place of its assets, that the claim of the Compagnie Générale des Eaux de Caracas, in liquidation, is based upon the failure to fulfill in its entirety the aforesaid contract;

That this contract, insofar as it goes, is the law between the parties, contains in itself the proof that the company is the owner of its claim, and that the Belgian character of the claimant has not been disputed. It is not to be considered whether foreign bondolders can indirectly take advantage of its action; considering:

That the defendant gives as a reason for its failure to fulfill the contract the existence of a mortgage which encumbers the real estate of the company, and demands the cancellation of this mortgage;

That it is clearly proven by the argument that the Government suspended the payment in 1897, alleging the poverty of the treasury, and that its decree concerning the danger of eviction arising out of the mortgage was made November 30, 1900; that is, three years later;

That it is proven by an authentic document produced in the arguments that all the bonds issued and guaranteed by this mortgage have been taken up and canceled, with the exception of eight, for which the company has constituted itself a guarantor;

---

[a] To this opinion there were annexed several exhibits referred to therein:

Exhibit A. A letter dated July 16, 1895, from Messrs. Herrera and Nevett, the minister of public works;

Exhibit B. A proposition of settlement with the National Government made by Herrera and Nevett on July 15, 1895, together with a letter from Señor Paquet of the same date refusing acceptance of payment in gold;

Exhibit C. A letter from the Bank of Caracas, dated July 24, 1903, stating that in the vaults of said bank there were bonds of the special domestic debt of the waterworks of Caracas to the amount of 152,500 bolivars; not printed herein

That as all danger of eviction has vanished, by reason of this fact, the necessity for canceling the mortgage is reduced to a mere technical objection, of which the protocol explicitly takes no account;

That the argument of the Commissioner of Venezuela, that the company took the bonds at 40 per cent of their nominal value, is contradicted by the text itself of the contract, in which it has been formally stipulated that these bonds were delivered at par; considering:

That the contract of 1895 created a time obligation, for the fulfillment of which certain revenues of the treasury were set aside and expressly designated;

That, notwithstanding this agreement, another use was made of the revenues so apportioned;

That, so far as concerns the debtor, the time may therefore be considered to have run out;

That, notwithstanding this, it is just that the debtor should have security; that by reason of the fulfillment of the present judgment it should be exempt from all obligations contracted by reason of the contract to which we have alluded, for these reasons, judging upon a basis of absolute equity, decides:

That the Compagnie Générale des Eaux de Caracas, in liquidation, shall deposit within the space of two months, counting from the present judgment, in the vaults of the Société Générale pour Favoriser l'Industrie Nationale of Brussels the sum of 4,000 francs, which shall be exclusively applied to the redemption at par of the eight bonds issued by it, and which it has not been able to recover.

The simple notification by the depository to the Venezuelan Government through the legation of Belgium at Caracas, shall be entirely sufficient to prove the fulfillment of this obligation.

The claim of the Compagnie Générale des Eaux de Caracas, in liquidation, against the Government of Venezuela for the failure to fulfill the obligations expressed in the contract made October 31, 1895, and the decree thereto annexed, is well founded.

The Government of Venezuela is declared to be a debtor in the sum of 10,565,199 bolivars and 44 centimos in gold, payable as is stipulated in Article V of the protocol. This sum shall be delivered to the Société Générale pour Favoriser l'Industrie Nationale of Brussels, which shall make thereof the following use:

The amount of each monthly installment, after reducing therefrom the bank charges, shall be divided by 21,131, and will give as a quotient the amount of extinguishment of each bond corresponding to the past month, an extinguishment which shall be paid to the holder upon presentation of the bond.

At the same time that there shall be divided among the holders the last monthly installment, the bonds shall be withdrawn perforated for cancellation, concerning which an authentic record shall be made, which must be sent to the Government of Venezuela.

The amounts which shall be left after effecting this operation shall be returned to the Government of Venezuela, with the exception of the sum necessary to take up at par the bonds which have not been presented. When the terms of prescription shall have run out this sum shall be returned to the Government of Venezuela.

SUMMARY OF CLAIMS.

No.	Name of claimant.	Amount claimed.	Amount disallowed.	Amount allowed.	Remarks.
		Bolivars.	*Bolivars.*	*Bolivars.*	
1	Raoul Ghislain	256,500.00	256,500.00	.....	
2	Administración Postal Belga	8,249.36	.....	8,249.36	
3	Norberto Paquet	1,514,347.42	1,189,152.36	325,195.06	
4	Compagnie Générale des Eaux de Caracas.	13,142,708.33	2,577,508.89	10,565,199.44	Award by umpire.
	Total	14,921,805.11	4,023,161:25	10,898,643.86	

BRITISH-VENEZUELAN MIXED CLAIMS COMMISSION.

PROTOCOL OF FEBRUARY 13, 1903.

Whereas certain differences have arisen between the United States of Venezuela and Great Britain in connection with the claims of British subjects against the Venezuelan Government, the undersigned, Mr. Herbert W. Bowen, duly authorized thereto by the Government of Venezuela and His Excellency the Right Honorable Sir Michael H. Herbert, K. C. M. G., C. B., his Britannic Majesty's Ambassador Extraordinary and Plenipotentiary to the United States of America, have agreed as follows:

ARTICLE I.

The Venezuelan Government declare that they recognize in principle the justice of the claims which have been preferred by His Majesty's Government on behalf of British subjects.

ARTICLE II.

The Venezuelan Government will satisfy at once, by payment in cash or its equivalent, the claims of British subjects which amount to about five thousand five hundred pounds (5,500) arising out of the seizure and plundering of British vessels and the outrages on their crews, and the maltreatment and false imprisonment of British subjects.

ARTICLE III.

The Venezuelan and British Governments agree that the other British claims, including claims by British subjects other than those dealt with in article VI hereof, and including those preferred by the railway companies, shall, unless otherwise satisfied, be referred to a Mixed Commission constituted in the manner defined in article IV of this Protocol and which shall examine the claims and decide upon the amount to be awarded in satisfaction of each claim.

The Venezuelan Government admit their liability in cases where the claim is for injury to, or wrongful seizure of property, and consequently the questions which the Mixed Commission will have to decide in such cases will only be: (a) Whether the injury took place and whether the seizure was wrongful, and (b) If so, what amount of compensation is due.

In other cases the claims shall be referred to the Mixed Commission without reservation.

ARTICLE IV.

The Mixed Commission shall consist of one Venezuelan member and one British member. In each case where they come to an agreement their decision shall be final. In cases of disagreement the claims shall be referred to the decision of an umpire nominated by the President of the United States of America.

ARTICLE V.

The Venezuelan Government, being willing to provide a sum sufficient for the payment within a reasonable time of the claims specified in Article III and similar claims preferred by other Governments, undertake to assign to the British Government, commencing the first day of March, 1903, for this purpose, and to alienate to no other purpose, 30 per cent in monthly payments of the customs revenues of La Guaira and Puerto Cabello. In the case of failure to carry out this undertaking, Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government, in respect of the above mentioned claims, shall have been discharged.

Any question as the distribution of the customs revenues so to be assigned, and as to the rights of Great Britain, Germany and Italy to a separate settlement of their claims, shall be determined, in default of arrangement, by the Tribunal at The Hague, to which any other Power interested may appeal.

Pending the decision of the Hague Tribunal the said 30 per cent of the receipts of the customs of the ports of La Guaira and Puerto Cabello are to be paid over to the representatives of the Bank of England at Caracas.

ARTICLE VI.

The Venezuelan Government further undertakes to enter into a fresh arrangement respecting the external debt of Venezuela with a view of the satisfaction of the claims of the bondholders. This arrangement shall include a definition of the sources from which the necessary payments are to be provided.

ARTICLE VII.

The Venezuelan and British Governments agree that, inasmuch as it may be contended that the establishment of a blockade of Venezuelan ports by the British naval forces has ipso facto created a state of war between Venezuela and Great Britain, and that any treaty existing between the two countries has been thereby abrogated, it shall be recorded in an exchange of notes between the undersigned that the Convention between Venezuela and Great Britain of October 29, 1834, which adopted and confirmed mutatis mutandis the treaty of April 18, 1825, between Great Britain and the State of Colombia, shall be deemed to be renewed and confirmed or provisionally renewed and confirmed pending conclusion of a new treaty of Amity and Commerce.

ARTICLE VIII.

Immediately upon the signature of this Protocol arrangements will be made by His Majesty's Government in concert with the Governments of Germany and Italy to raise the blockade of the Venezuelan ports.

His Majesty's Government will be prepared to restore the vessels of the Venezuelan navy which have been seized and further to release any other vessels captured under the Venezuelan flag on the receipt of a guarantee from the Venezuelan Government that they will hold His

Majesty's Government indemnified in respect of any proceedings which might be taken against them by the owners of such ships or of goods on board them.

ARTICLE IX.

The Treaty of Amity and Commerce of October 29, 1834, having been confirmed in accordance with the terms of article VII of this Protocol, the Government of Venezuela will be happy to renew diplomatic relations with His Majesty's Government.

Done in duplicate at Washington this 13th day of February, 1903.

HERBERT W. BOWEN.
MICHAEL H. HERBERT.

PROTOCOL OF MAY 7, 1903.

Whereas, by a Protocol signed on the 13th February, 1903, by his Excellency the Right Honourable Sir Michael Henry Herbert, G. C. M. G., C. B., His Britannic Majesty's Ambassador Extraordinary and Plenipotentiary in the United States of America, and Mr. Herbert W. Bowen, duly authorized thereto by the Government of Venezuela, it was agreed that certain claims by British subjects, including those preferred by the railway companies, against the Government of Venezuela should, unless otherwise satisfied, be referred, under the conditions specified in the Protocol, to a mixed commission, to consist of one British and one Venezuelan member, and that in each case where the commissioners came to an agreement their decision should be final; and that, in cases of disagreement, the claims should be referred to the decision of an umpire nominated by the President of the United States of America:

Now the undersigned His Excellency Sir Michael Henry Herbert, G. C. M. G., C. B., His Britannic Majesty's Ambassador Extraordinary and Plenipotentiary in the United States of America and Mr. Herbert W. Bowen duly authorized by the Government of Venezuela, have further agreed as follows:

One member of the commission shall be appointed by His Britannic Majesty's Government and the other by the Government of Venezuela, and the umpire shall be nominated by the President of the United States of America.

If either of the said commissioners or the umpire should fail or cease to act, his successor shall be appointed forthwith in the same manner as his predecessor. The said commissioners and umpire are to be appointed as soon as possible.

The commissioners and the umpire shall meet at Caracas on the 1st day of June, 1903.

Before assuming the functions of their office, the commissioners, and the umpire, if necessary, shall make solemn oath or declaration carefully to examine and impartially decide, according to justice and the provisions of the Protocol of the 13th February, 1903, and of the present Agreement, all claims submitted to them, and the oath or declaration so made shall be embodied in the record of their proceedings. The commissioners, or, in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without

regard to objections of a technical nature, or of the provisions of local legislation.

The decisions of the commission, and, in the event of their disagreement, those of the umpire, shall be final and conclusive. They shall be given in writing. All awards shall be made payable in sterling money of Great Britain, or its equivalent in silver at the current rate of exchange of the day.

The commissioners, or umpire, as the case may be, shall investigate and decide the said claims upon such evidence or information only as shall be furnished by or on behalf of the Governments of Great Britain and Venezuela respectively. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the Governments respectively in support of or in answer to any claim, and to hear oral or written arguments submitted by the agent of each Government on every claim. In case of their failure to agree in opinion upon any individual claim, the umpire shall decide.

Every claim shall be formally presented to the commissioners within thirty days from the day of their first meeting, unless the commissioners or the umpire in any case extend the time for presenting the claim for a further period not exceeding three months. The commissioners shall be bound to examine and decide upon every claim within six months from the day of its first formal presentation, and, in case of their disagreement, the umpire shall examine and decide within a corresponding period from the date of such disagreement.

The commissioners and the umpire shall keep an accurate record of their proceedings. For that purpose each commissioner shall appoint a secretary versed in the language of both countries to assist him in the transaction of the business of the Commission.

In the proceedings either the English or Spanish language may be used. Except as herein stipulated, all questions of procedure shall be left to the determination of the commissioners, or, in case of their disagreement, to the umpire.

Reasonable remuneration to the commissioners and to the umpire for their services and expenses, and the other expenses of the said arbitration, are to be paid in equal moieties by the Powers parties to this Agreement.

MICHAEL H. HERBERT.
HERBERT W. BOWEN.

PERSONNEL OF THE BRITISH-VENEZUELAN COMMISSION.

Umpire.—Frank Plumley, of Northfield, Vt.
British Commissioner.—Herbert Harrison.
Venezuelan Commissioner.—Pedro V. Azpurúa until June 20, 1903, when he was succeeded by—
Carlos F. Grisanti.
British Agent.—Gilbert Mellor.
Venezuelan Agent.—F. Arroyo-Parejo.
British Secretary.—Thomas Guyatt.
Venezuelan Secretary.—Emilio de Las Casas.
Umpire's Secretary.—J. Earl Parker, of Washington, D. C.

RULES OF THE BRITISH-VENEZUELAN COMMISSION.

I.

The British agent shall present to the Claims Commission within the time specified in the protocol, a memorial on each claim, accompanied by documents and proofs.

II.

The memorial shall be presented in the English language, accompanied by a translation into Spanish.

III.

The answers presented in writing by the Venezuelan Commissioner or agent shall be in Spanish, accompanied by a translation into English.

IV.

The British agent or Venezuelan Commissioner presenting a document shall, if required to do so, also supply a translation thereof and provide a sufficient number of copies for the use of the Commission.

V.

The memorial must specify with precision the sum claimed, clearly stating the currency in which the damage is calculated

VI.

When a memorial is presented, a written receipt shall be given by the secretaries to the British agent. It shall then be inscribed in the appropriate register, a note being made on the memorial itself of the date of its receipt and its number.

VII.

The Venezuelan Commissioner shall answer in writing each memorial presented, taking whatever exceptions he may deem necessary, and refuting the proofs of the claimant with such counter proofs as he may think relevant, producing all necessary documents.

VIII.

The answer in writing shall be presented with as short a delay as possible, and at most within thirty days of the presentation of the memorial.

IX.

The answer of the Venezuelan Commissioner shall be registered, as above, and notified to the British agent, who may reply to it within fifteen days.

X.

The reply of the British agent shall be presented and registered, as above, and notified to the Venezuelan Commissioner or agent, who may make counter reply within fifteen days. The counter reply shall be presented and registered, as above, and notified to the British agent.

XI.

The British agent may, if he think fit, inform the secretaries that he renounces his right to reply to the answer of the Venezuelan Commissioner or agent. The secretaries shall thereupon notify the Venezuelan Commissioner or agent, who shall in that case have no right to make a counter reply.

XII.

As soon as the last notification prescribed by Articles IX and X shall have been made, the secretaries shall inscribe the claim in the list of claims for hearing, and shall forthwith notify the same to the Commissioners or agents of both Governments. The tribunal shall then fix a day for the hearing.

XIII.

The umpire shall be present at all formal meetings of the Commission, and his decision upon any point may be invoked at any stage of the case. When this decision is pronounced it shall be entered in the records of the proceedings.

XIV.

After hearing the case, if the Commissioners are agreed, the tribunal may give its decision as soon as the same can be put in writing. If the Commissioners disagree, but mutually consider that further investigation is necessary, the tribunal may order such further investigation fixing the time and place thereof, and if the Commissioners can then agree, the decision may be rendered as provided in the first part of the article.

XV.

No one may attend the sittings of the tribunal except the agents of the Governments, the official secretaries, and the secretary of the umpire. The claimants or their representatives and other persons may attend if they obtain the authorization of the tribunal in writing.

XVI.

The secretaries shall keep, besides the register mentioned in Article VI, a book in which they shall enter a record of the proceedings and the decisions of the tribunal in each case, and another in which they shall enter the minutes of the sittings. These books shall be kept in duplicate, one copy in English and the other in Spanish, and shall be verified and approved and signed by the tribunal. When the tribunal shall have completed its labors, the copies in English shall be delivered to the British agent, and those in Spanish to the Venezuelan Commissioner.

XVII.

All documents and records of the Commission shall be considered confidential.

INTERLOCUTORY OPINIONS.

CROSSMAN CASE.

Meaning of "wrongful seizure" in the protocol.

PLUMLEY, *Umpire:*

James Crossman is a native of Cornwall, England, now resident at Puerto Cabello, but at the time of the happening of the events hereinafter stated was a resident of Pueblo Nuevo, Aroa, jurisdiction of the State of Lara, and a British subject.

On the 31st day of December, 1899, that division of the liberal restoration army which was under the command of Gen. Rafael Montilla entered Pueblo Nuevo and went into garrison in the fortress there situated. The dwelling house of the claimant was taken and used by General Montilla as quarters for some of his troops while he so remained in garrison. The exact time which elapsed while he was thus in garrison and in use of such dwelling house as aforesaid does not appear, but during the time an officer of this command took from the claimant his horse, a valuable one, and the saddlery. Also while in such occupancy of the house a gold watch of great value, some clothing, and furniture, which belonged to the claimant and were left in the house by him, were taken from said house, and the claimant attributes this loss solely to the fact that it was so occupied by Government troops. His alleged damages are 2,500 bolivars; 800 for the horse and saddlery and 1,700 for the other property. There is no statement whether or not the troops quartered in his house were private soldiers, officers, or both. In addition to his own memorial and plea he submits two depositions as his proof in the case.

This claim was presented to the Commission on the 11th ultimo, and the learned agent for Venezuela made answer thereto on the 15th instant, using in part the language following:

> In the opinion of the undersigned, the most favorable suppoeition on behalf of the pretext which the claimant can allege is the smallness of the amount claimed, because the evidence which might be derived from the testimonial justification presented is counterbalanced by the consideration that it was effected without the assistance of the party opposed in the judgment.
>
> It might also be objected that the injurious acts mentioned were of a personal character and that, previously, the individual responsibility of their authors should be prosecuted. The tribunal and the court of Brussels, with the occasion of a claim founded by one Delbrouk of Limbourg, who with the pretext that, on the 8th of August of 1831, soldiers belonging to different corps of the army of Maes had caused him injuries, brought an action against the State for an indemnification. In compensating damages caused by acts of transgression of law, the tribunal said, the action must be brought against those who are civilly responsible for punishable deeds committed by military at their service. (See Fiore, Droit Int. Pub., vol. 1, p. 576, note 1.)
>
> In the present case it does not appear confirmed in any way that the troops obeyed superior orders, nor that the nearest military authorities could have avoided the damages done. Therefore the undersigned considers that, even in case the damages alleged by the claimant were true, these constitute a case of *force majeure*, a necessary calamity in view of the exceptionable circumstances under which the country where he resided was, and that the responsibility of Venezuela should not be declared, as an antijuridical precedent would thus be created.[a]

The issue presented raised no question of fact.

On the 17th instant the learned agent for the British Government made a reply to this answer by filing a written objection to the same, as follows:

---

[a] Opinion of Venezuelan Commissioner not printed.

CLAIM OF JAMES CROSSMAN—PRELIMINARY OBJECTION TO THE ANSWER.

This is a claim for wrongful seizure of property. The protocol of February 13, 1903, provides:

"ARTICLE 3. The Venezuelan Government admit their liability in case where the claim is for * * * wrongful seizure of property, and consequently the questions which the Mixed Commission will have to decide will only be:

"(a) * * * whether the seizure was wrongful, and

"(b) If so, what amount of compensation is due."

Therefore, in this case, the only questions open to the Commission are:

(1) Did the seizure take place?

(2) Was the seizure wrongful or not?

(3) If wrongful, how much is due?

Upon the presentation of this preliminary objection to the tribunal, it then being in session, the issue as made was discussed by the honorable Commissioners of this tribunal, and, failing to agree, the same was there and then referred to the umpire for his opinion thereon.

Concerning the interlocutory question thus raised, the undersigned, umpire by virtue of his appointment under said protocol, is of the opinion which follows:

The umpire has presented to him the alternative of a strict construction of and a close adherence to the minimum issues involved in the matter submitted to him preliminary to the determination of the question of liability on the part of Venezuela, or a broad and general interpretation of the questions permitting answer under the submission as it comes to him from the honorable Commissioners. To take the first alternative would require of the umpire less care and responsibility, and would be thus far gratifying in its aspect, but it would be much less helpful in the determination of the questions involved in this case, and would aid but little in preparing the way for the determination of other causes which may rest in whole or in part upon the fundamental propositions here made. After much careful consideration of the matter and some hesitancy for fear that he was overstepping the purpose and desire of the learned gentleman who first raised these interlocutory matters and of the honorable Commissioners who made final reference of the same to the umpire, he has decided that it was the wish of all these, and therefore his duty, that he should take the more broad and general view of the questions raised and express to the tribunal his opinion thereon.

If in the case before us there has been a wrongful seizure in its full and complete sense, then, in the opinion of the umpire, Venezuela has admitted her liability without reserve, and it follows that the subdivisions of inquiry suggested by the learned agent for the British Government in his preliminary objection are the only questions open for discussion and determination. There are, however, within these subdivisions main lines of inquiry and of consideration which must be passed upon before there can be an affirmative or a negative answer to the main proposition, and the assent of the umpire to these subdivisions as being exclusive rests upon the assumption that these are understood to be included within his list of subdivisions.

1. In a solemn agreement between nations referring to wrongs which one of the signatory parties thereto claims should be redressed by the other and which it is proposed shall be submitted to a tribunal to determine, what is the import and scope of the word "seizure?" Negatively it may be stated that it is not any wrongful taking of the property of a British subject by Venezuela. It does not mean

property taken by robbery, tneft, pillage, plunder, sacking, or trespass. Affirmatively it may be said that it is limited to a seizing under and by virtue of authority, civil or military. Necessarily it follows that it is always legitimate to inquire in any case raised under the protocol how, when, where, and by whom it was taken or used.

2. Given that a seizure is made out, there is yet to be established that it is wrongful, and therefore the import of the words in their connection and relation as used in the protocol is a necessary matter to determine. There is required in every case a wrongdoer as well as that wrong has been done or suffered. A wrong intent or willful purpose must accompany the act. It is not enough to know that a wrong has been suffered. Not only must the act be willful or with wrong intent, but it must be perpetrated by some one having a right whereby to declare and express a governmental will and intent.

These points, and without doubt others of a kindred nature, are calculated to assist in determining the question, "Has there been a wrongful seizure?" and are therefore relevant, important, and competent.

The meaning of the umpire in what he has here expressed may be illustrated by the case in hand. Was the taking of the horse and saddlery of the claimant by an officer in General Montilla's command, in the manner and under the circumstances stated and established by the proof, a seizure in its proper sense, taken in its relations as used in the protocol? Is—

> the evidence which might be derived from the testimonial justification presented counterbalanced by the consideration that it was effected without the assistance of the party opposed in the judgment,

as contended by the learned agent for Venezuela in his answer? Is it established that it was taken under superior orders, as questioned in the same answer? The umpire regards both of these points practically similar in their application as well made and necessary to be considered and determined before it can be said that there was or was not a seizure of the horse in the sense in which that word is used in the protocol.

How is it with the gold watch and furniture taken from the dwelling house of the claimant as established by his evidence? Was such taking a wrongful seizure as contemplated by the protocol? If it was a taking of army supplies for the benefit of the army, and of a character and nature proper subjects of military use, it might make an affirmative answer more easy. If it were the wanton and unauthorized destruction or taking of private property by private soldiers not under orders, and property of a character not suited to military use or to the uses of the military, then it could not be called a seizure under the protocol. And especially is this true if it is not shown to be applied to the use of the soldiers of the Government.

An act of pillage, plundering, or sacking is a direct antithesis of an act of seizure. The first implies not only a lack of authority, but an act done in immediate contravention of all authority. It disclaims and denies governmental responsibility, and is in direct opposition to that authority. To seize directly implies authority, warrant, and executive responsibility. In peace it ordinarily requires an officer duly commissioned, armed with a warrant duly issued. In war it likewise requires a condition of authority and power.

It is important in this connection to ascertain from the proof if the gold watch or furniture or any part thereof has been shown to have been in the possession of any of General Montilla's troops, and if anything has been shown in that regard further than the disappearance of the property while his army was garrisoned in the town and had quarters in this dwelling house.

These matters are all involved in the position taken by the answer of the learned agent for Venezuela in the parts heretofore quoted and are therefore matters of issue, and in the opinion of the umpire the facts admit of such issues.

On the other hand, if the umpire has the right conception of the learned agent's contention in the third paragraph of his answer, it is a point not well taken, but the issue there made is expressly excluded by the admitted liability of Venezuela in that part of the protocol quoted by the learned agent for the British Government in his preliminary objection thereto.

There is another view of that part of the case covering the taking of the gold watch and furniture which is raised by the answer of the learned agent for Venezuela in the expression "nor that the nearest military authorities could have avoided the damages done" which, in the judgment of the umpire, is of material importance in the final determination of this case, and under that head it is a proper matter of consideration to determine whether the taking of the house of the claimant by General Montilla as quarters for some of his troops did not place upon him and the officers of his command a special responsibility by proper and sufficient guards to prevent pillage, plunder, robbery, or sacking of the dwelling house of the claimant by his troops or by anyone while he, through his officers, had exclusive possession and control of the house and the property therein. The measure of duty resting upon the Government, through its officers, in this regard may determine the question of its liability in this case.

The umpire is aware that he has not touched upon many questions that might well be raised to assist in the determination of the issues in this case, and it has not been his purpose to write exhaustively thereon but to pass only upon such points as seemed to him certainly material and probably helpful in the final settlement of the case. It may be stated in general to be the position of the umpire that everything which helps to determine the primary question of a wrongful seizure under the facts and circumstances of this case so related to the Government of Venezuela that it is responsible therefor, and has admitted its liability concerning in Article III of the protocol, are properly before the Commission for its discussion and determination, and whether or not the facts and circumstances of this claim—

> constitute a case of *force majeure*, a necessary calamity in view of the exceptionable circumstances under which the country where he (claimant) resided was, and that the responsibility of Venezuela should not be declared, as an antijuridical precedent would thus be created,

as contended by the learned agent for Venezuela in the conclusion of his answer, or a rightful duty and responsibility be cast upon Venezuela to recompense the claimant for his losses, will all depend upon the answer to the questions involved, in the consideration and decision of which the opinions of the umpire here expressed may be in some degree helpful and determinative.

De Lemos Case.

Meaning of "wrongful seizure" in the protocol.

CONTENTION OF BRITISH AGENT—PRELIMINARY OBJECTION TO THE ANSWER.

The Venezuelan agent is not entitled to set up any matter of principle as an answer to this claim, any such answer being against the terms of the protocol of February the 13th, 1903, which expressly provides for such cases:

ARTICLE III. The Venezuelan Government admit their liability in cases where the claim is for injury to * * * property, and consequently the questions which the Mixed Commission will have to decide will only be:
(a) Whether the injury took place, * * * and (b) if so, what amount of compensation is due?

GRISANTI, *Commissioner* (claim referred to umpire):

I regret to differ from the British agent's interpretation of the protocol signed at Washington on the 13th of February last, as stated in his preliminary objection, in which he states that the Venezuelan agent has no right to introduce any matter of principle in his objections to Mr. Ch. de Lemos's claim.

In my opinion, the Venezuelan Commissioner, as well as the agent of the Republic, always has the right of setting up the philosophical and juridic principles applicable to the case under examination, so that it is morally impossible that Great Britain, which ranks deservedly among the most enlightened nations of the world, should obtain a juridic decision, abstracting therefrom the principles of justice and the postulates of law, which comprise the most precious treasure of civilization.

The Venezuelan and British Claims Commission is a court, and to exclude justice, right, and equity from its deliberations is the same as depriving a man of the essential attributes of his being, and nevertheless to continue considering him as a man.

The analysis of the language of the protocol strengthens the opinion held by the underwriter.

Article 3 of the protocol says in the second paragraph: "The Government of Venezuela admits their liability in cases where the claim is for injury to or wrongful seizure of property," etc. By this expression it is understood that we rely on some principle, cause, or reason; therefore the claim which has no legitimate foundation, and is not supported by juridic principles which regulate the conduct of civilized countries is inadmissible, and the tribunal of which I have the honor to be a member must reject it. The second clause says "or wrongful seizure of property." The Commission, therefore, has a right to decide with regard to the justice or injustice of embargoes.

The meaning given by the British agent to article 3 of the protocol would convert this tribunal into a mere appraiser of damages, causing it ipso facto to lose its powers of deliberation. I have shown clearly that the Venezuelan and British Claims Commission has the right and is bound to examine and decide in each case whether the claim is legitimate and whether Venezuela is bound to pay it or not; I consequently will proceed to explain the principles and reasons why the claim of Consul Ch. de Lemos is not a just one and therefore inadmissible.

A part of the troops at Ciudad Bolívar, having revolted against the National Government, the latter was under the unavoidable obligation of subduing the insurgents in order to reestablish order and

make the people submit to the constitutional order from which they had suddenly withdrawn, which submission was absolutely essential for the well-being of the Republic, and to the security of national and foreign interests. The town was attacked with that object and naturally national and foreign interests were damaged. Among the latter, according to Mr. Consul de Lemos, his wife was injured.

Supposing that such a statement were proved, the Republic would not be compelled to repair the damage caused by the shells on the two houses of the above-mentioned lady. The attack on the city and the subsequent damage occasioned were not a deliberate act of the authorities, but a necessity imposed upon them in an unavoidable manner by the course of events.

Let us consult some renowned authors and eminent statesmen on international law.

363. Les gouvernements sont-ils ou non responsables des pertes et des préjudices éprouvés par des étrangers en temps de troubles intérieurs ou de guerres civiles? Cette question a été longuement discutée et finalement résolue par la négative.

Avant de fournir les preuves pratiques de notre assertion, nous développerons ici sur cet important sujet quelques considérations générales.

Admettre dans l'espèce la responsabilité des gouvernements, c'est-à-dire le principe d'une indemnité, ce serait créer un privilège exorbitant et funeste, essentiellement favorable aux Etats puissants et nuisible aux nations plus faibles; établir une inégalité injustifiable entre les nationaux et les étrangers. D'un autre côté, en sanctionnant la doctrine que nous combattons on porterait, quoique indirectement, une profonde atteinte à un des éléments constitutifs de l'indépendance des nations, celui de la juridiction territoriale; c'est bien là en effet la portée réelle, la signification véritable de ce recours si fréquent à la voie diplomatique pour résoudre des questions que leur nature et les circonstances au milieu desquelles elles se produisent font rentrer dans le domaine exclusif des tribunaux ordinaires.

364. A l'appui de cette doctrine nous citerons tout d'abord l'opinion exprimée en 1849 par M. le baron Gros, lors de sa mission spéciale en Grèce pour le règlement des célèbres réclamations pécuniaires de Don Pacífico. "En général," disait ce diplomate dans une de ses dépêches au gouvernement français qui a été plus tard communiquée au parlement anglais, "il est admis en principe, et ce principe est conforme à l'équité, qu'il ne peut exister d'intervention diplomatique dans les différends où *l'autorité locale* ne se trouve pas en cause; c'est aux tribunaux et conformément aux lois du pays que la partie lésée, quelle que soit sa nationalité, doit recourir et demander justice."

Lord Stanley, traitant la même affaire au sein du parlement britannique, s'exprima ainsi: "Je ne crois pas que les gouvernements soient tenus, dans toute la rigueur de ce mot, d'indemniser les étrangers qui ont éprouvé des pertes ou des préjudices par suite de circonstances de force majeure. Tout ce qu'ils peuvent faire dans les cas semblables, c'est de protéger par tous les moyens en leur pouvoir les nationaux et les étrangers résidant sur leur territoire contre des actes de spoliation ou de violence." (Calvo. Le Droit International, Théorique et Pratique. 3d édition, Vol. I, p. 434.)

Fiore, after establishing the principles which ought to guide the responsibility of the State for damage caused to foreigners in its territory, says:

674. Maintenant, nous allons indiquer l'application des règles que nous venons d'exposer à certains cas particuliers. Nous nous occuperons surtout de l'obligation qui incombe à l'Etat de réparer les préjudices soufferts par les particuliers pour les faits de guerre.

La règle générale qui nous paraît devoir servir à résoudre toute difficulté à ce sujet, c'est que la responsabilité des gouvernements par rapport aux étrangers ne peut pas être plus étendue que celle des Souverains étrangers à l'égard de leurs propres citoyens. On ne pourrait pas, en effet, prétendre que les devoirs d'hospitalité pourraient limiter l'entier exercice du droit qui appartient à la souveraineté d'employer tous les moyens légaux pour pourvoir à la conservation de l'Etat, ou que les étrangers pourraient obtenir une position privilégiée, être exempts des conséquences fâcheuses des calamités publiques et être garantis de tout dommage qui pourrait résulter de la force majeure et de l'impérieuse nécessité de veiller à la sûreté de la chose publique.

675. Supposons qu'un pays soit agité par la révolution et par la guerre civile, et que le gouvernement pour réprimer le désordre emploie les moyens de répression requis pour sauvegarder les intérêts de l'Etat et qui ne sont pas absolument défendus par le droit international. Si par ce fait les étrangers éprouvaient un préjudice le gouvernement ne pourrait pas être déclaré responsable, ni être tenu de les indemniser du dommage par eux éprouvé. Si un gouvernement négligeait de faire tout le nécessaire pour protéger la propriété et les biens des étrangers, s'il ne s'occupait pas de réprimer les violences et les offences causées par les citoyens, il serait tenu de répondre des conséquences de sa négligence coupable; mais si le préjudice était résulté de la force majeure il n'existerait aucune responsabilité légale. L'action d'un gouvernement ne pourrait pas être paralysée par la nécessité de protéger les droits des étrangers. (Fiore, Nouveau Droit International Public, 2d edition, Vol. I, p. 582.)

1231. Les habitants des pays envahis ou occupés, quoique ne prenant pas une part directe à la lutte, ont été atteints dans leur biens. Ils ont subi des dommages matériels ou des réquisitions, payé des contributions de guerre ou des amendes. Ont-ils droit à une indemnité, et, en cas d'affirmative, à qui peuvent-ils s'adresser pour l'obtenir?

Divisons la question.

Quant aux *dommages* résultant des faits de guerre, des actes de violence et de lutte, des combats, des assauts, des bombardements, des dévastations, des incendies, du pilage, des vols commis par les soldats, etc., etc., aucun recours n'est ouvert pour leur réparation. Le droit international ne peut admettre le principe d'une action. La guerre est pour le simple particulier un cas de force majeure. Elle est pour lui un mal inévitable comme l'est une grêle, une inondation. Il est victime d'un fléau, non d'une injustice, dit Bluntschli. Juridiquement, il n'a droit à aucune indemnité. (Bonfils, Manuel de Droit International Public, 3e éd., p. 680.)

In 1849 England claimed of Austria compensation for losses sustained by some of Her Britannic Majesty's subjects at the assault of Leghorn, and in this connection Count Nesselrode said (May 2, 1850):

According to the rules of public law, as understood by the Russian Government, it can not be admitted that a State (compelled by a revolt to repossess itself of a town occupied by the insurgents) is bound to indemnify foreigners who may have suffered damages by reason of the attack. The foreigner who settles in a country accepts, voluntarily and in advance, the risks to which the country is exposed, and as he enjoys the advantages which the natives enjoy so also must he share their misfortunes. Foreign and civil war are clearly in the same category. (Calvo, Vol. III, p. 145; Seijas, Vol. III, p. 553.)

It would not be amiss to mention the principles of the law of nations, which have been strengthened by reason of the claims founded upon the bombardment of Valparaiso, March 31, 1866. An Anglo-American firm established there experienced losses due to the burning of their goods from the cannonading. The question arose as to whether they had any right to reclaim indemnity of Spain or Chile for the injuries done. The question was referred to the attorney-general, who decided in the negative. In his opinion he states that the act, although one of extreme severity, was an act of war and can not be said to have been contrary to the laws which regulate it. It is a well-established rule in international law that the alien who resides in a belligerent country can not claim indemnification for the losses suffered on his property due to acts such as those under consideration. The attorney afterwards states the case of the bombardment of *Copenhagen by the English in 1807, in which Great Britain did not allow any claim, although the foreigners of that town suffered very serious losses, and notwithstanding that there had been no previous declaration of war to Denmark nor any justifiable motive for the bombardment.*

He also called attention to the bombardment of San Juan de Nicaragua effected by the sloop *Cyane*, to the detriment of the French residents there—through their minister at Washington—but without the express sanction of the Imperial Government they presented a claim for indemnification. Mr. Marcy, then Secretary of State, replied:

The undersigned is not aware that the principle that foreigners domiciled in a belligerent country must share with the citizens in that country in the fortunes of war has ever been seriously controverted or departed from in practice. (Marcy, Secretary of State, to M. de Sartiges, Feb. 26, 1857.)

This maxim being the one which was proclaimed in the law of March 6, 1854, with respect to political disturbances; that which was projected in the law of Colombia of April 19, 1865; that which was the purpose of the Convention made by Mr. Toro in Santander in 1861; that which is found adopted by the treaty which this gentleman made with Italy in June of the same year, it is not understood why it has been protested against in some cases. The whole difference consists in the fact that there it was applied to a war between two States and here it is confined particularly to internal disturbances. Moreover all difficulty disappears if it is remembered that the latter either have a certain extent and other circumstances, and they are then called civil war, and they are governed by the same laws as those of international war; or they do not reach this importance, and in this supposition constitute only a private wrong such as an injury, pillage, robbery, for which no nation has ever thought to make other nations responsible. In the controversies which have given rise to the frequent claims made against Venezuela, no rule so just as well as suitable, has ever been invoked. (Report of Foreign Relations of Venezuela, 1869.)

The conduct of governments has been in perfect accord with the principles stated. The United States, in 1851, owing to the claims made by Spain in consequence of the disorders which took place in New Orleans on account of the war that harassed the Republic from 1861 to 1865; England (case above cited), in 1807; Spain, in 1850, owing to the claims of some of her subjects against Venezuela; France, in 1830, 1848, and 1871; Belgium, with regard to her struggles with Holland to obtain her independence, from 1830 to 1832—none of these nations has admitted that they were under the obligation of indemnifying aliens for damages caused by the wars sustained in the above-mentioned years.

371. C'est encore ce même principe ou cette même jurisprudence que l'on a vu observer lors du dernier soulèvement de la Pologne, et durant le cours de la formidable lutte intestine qui a déchiré la République des Etats-Unis d'Amérique de 1860 à 1865.

Dans ces deux circonstances un grand nombre d'étrangers ont éprouvé de cruelles pertes, et pourtant aucune nation européene n'a songé à en faire peser la responsabilité sur les gouvernements respectivement intéressés. (Calvo, Le Droit International Théorique et Pratique. 3e éd., Vol. I, p. 438.)

Referring now, more precisely, if possible, to the attack of Cuidad Bolívar, as this was occasioned by an unavoidable necessity, absolutely against the will of the Government, it clearly shows *force majeure*, which exempts the State of all responsibility for damages caused in its dominions.

I consider it very opportune to quote here what Calvo says on this point. It is as follows:

Relativement aux droits de personnes appartenant à une nationalité neutre et résidant sur le territoire d'un belligérant, les jurisconsultes anglais, en 1870, pendant la guerre entre la France et l'Allemagne, exprimèrent l'opinion que les sujets anglais ayant des propriétés en France n'avaient pas droit à une protection particulière pour leurs propriétés, ou à l'exemption des contributions militaires auxquelles ils pouvaient être astreints solidairement avec les habitants de l'endroit où ils résidaient, ou bien où leurs propriétés étaient situées, et qu'ils n'avaient non plus, en toute justice, aucune raison de se plaindre des autorités françaises parce que leurs propriétés étaient détruites par une armée d'invasion.

Une famille de sujets anglais demeurant dans la commune de La Ferté Imbault, à l'approche des troupes prussiennes hissa le drapeau anglais au-dessus de la porte du château qu'elle habitait, espérant que la présence de ces couleurs neutres la protégerait contre toute violence; mais elle n'en eut pas moins à souffrir de pillage, de menaces et de mauvais traitements de la part de la soldatesque. Elle adressa à ce sujet une plainte à Lord Granville, qui lui répondit que, bien que le gouvernement

anglais regrettât vivement les tracas et les pertes qu'elle avait éprouvés, il n'était pas en son pouvoir de lui faire obtenir aucune réparation.

Un autre sujet anglais, M. Lawrence Smith, qui habitait Saint-Ouen, s'étant plaint que, quoiqu'il eût arboré le drapeau anglais sur sa maison, des soldats prussiens étaient venus loger chez lui, lui avaient pris toutes ses provisions, avaient tiré une décharge de coups de fusil dans une cave où sa famille s'était réfugiée, avaient mis le feu à sa maison et forcé sa famille de se sauver à moitié vêtue dans un bois à travers la neige. Lord Granville répondit que le gouvernement anglais ne pensait pas en droit strict que la famille Smith fût autorisée à demander une indemnité au gouvernement prussien, mais qu'il était évident que la destruction de la propriété était un acte de violence commis par les troupes prussiennes par suite du relâchement de la discipline. En pareil cas il était d'avis que les faits pourraient être portés officiellement à la connaissance du gouvernement allemand, en exprimant l'espoir qu'il jugerait à propos d'ordonner aux autorités militaires de procéder à une enquête et d'ordonner, comme acte de justice, une indemnité pour les dommages commis sans raison. (Calvo, Le Droit International, Théorique et Pratique, 3e éd., Vol. III, p. 227, sec. 1942.)

Hence the principles of justice prohibit the admission of Consul de Lemos' claim.

There is one more reason for rejecting it; said claim is not legally proved. In the files are to be found as proofs:

First. Consul de Lemos's affidavit made on the 15th of January of the current year in presence of Mr. John Dennis Sellier, notary public. As a general rule the testimony of a person in support of a fact is not admissible when that person is greatly interested in the establishment of said fact.

Second. The testimony of Benjamin Waithe and Antonio Villalobo, delivered in presence of the Consul de Lemos himself, is absolutely void. The fact is, that said consul can not be a judge of his own cause, and in receiving and authorizing those declarations, he has sought to be one, trying to assume two positions entirely incompatible.

Besides, in the taking of the proofs, the universally acknowledged and respected rule of *locus regit actum*, by which these declarations of witnesses should have been made before a territorial judge, has been violated.

PLUMLEY, *Umpire:*

Charles Herman de Lemos is a naturalized British subject, and at the time of the happening of the events hereinafter stated was, with his wife, Guillermina Dalton de Lemos, resident of Ciudad Bolívar, and His Majesty's consul at that city.

On the 20th, 21st, and 22d of August, 1902, the unfortified parts of Ciudad Bolívar were shelled by the Venezuelan gunboats *Bolívar* and *Restaurador*, throwing some 1,400 to 1,500 shells into the very heart of the city. Guillermina Dalton de Lemos was then the owner of two buildings situate in the said city of Bolívar, one in the Calle Miscelánea and the other in Calle Amor Patria, which buildings were then severally damaged by the said shells striking and breaking upon them, at an estimated damage of £300, for the payment of which this claim is presented to the Mixed Commission.

To this claim the learned agent for Venezuela made answer of June 18, 1903, which was presented to this tribunal on June 26. In this answer there was no denial that the damage was inflicted substantially as in the claim presented, but these facts were alleged: A garrison in the capital of the State of Bolívar rebelled against the National Government, and the National Government, on account of the persistent rebellious attitude of the revolutionists, ordered the attack named in

the claimant's statement in virtue of the right of defense and in fulfillment of its duties as such National Government for the purpose of recovering possession and control of the city, and it was in consequence of this attack and during this bombardment that the two buildings belonging to the wife of Consul de Lemos were injured. The insurrection of the forces at Ciudad Bolívar and the resulting attack on the city by the Government took place at the time when a revolution against the Government broke out in the country. Based upon the facts stated, it was claimed by the learned agent for Venezuela that the action complained of was a necessary and rightful act of the Venezuelan Government under the circumstances and conditions stated, and that the damage to the plaintiff's buildings was a natural and unavoidable damage; that this action of the Venezuelan Government was perfectly justifiable, and that there was in consequence no valid claim against his Government for the damages suffered by the claimant.

The learned agent for Venezuela made a further statement in his answer as follows:

As regards the claim, it is unacceptable under the light of principles of public law universally accepted. One of the principles is that the foreigner who establishes himself in a country accepts spontaneously beforehand the dangers and eventualities to which said country may be subjected, and in the same way that he partakes of the advantages of the natives, so he must submit to suffer the calamities that the natives suffer. To support arguments to the contrary would be establishing for the foreigner a privilege against the national sovereignty and absolutely unsupportable in accordance with principles of equity.

To this answer, at a sitting of this tribunal of June 26, the learned agent for the British Government made reply by filing an objection thereto as follows:

CLAIM OF DE LEMOS—PRELIMINARY OBJECTION TO THE ANSWER.

The Venezuelan agent is not entitled to set up any matter of principle as an answer to this claim, any such answer being against the terms of the protocol of February 13, 1903, which expressly provides for such cases:

"ARTICLE III. The Venezuelan Government admit their liability in cases where the claim is for injury to * * * property, and consequently the questions which the Mixed Commission will have to decide will only be—

(a) Whether the injury took place * * * and

(b) if so, what amount of compensation is due."

At a sitting of this tribunal on the 11th day of July the honorable Commissioner for Venezuela replied in writing to this preliminary objection, insisting that his Government had the right under the protocol and before the Commission always to adduce "the philosophical and juridical principles applicable to the case under examination," and—

that it is morally impossible that Great Britain, which deservedly ranks among the most enlightened nations of the world, should accomplish a juridical act proscribing therefrom the principles of justice, the postulates of law, which form the wealthiest treasure of civilization.

The Venezuelan and British Claims Commission is a tribunal, and to exclude justice, right, and equity from its deliberations is the same as depriving a man of the essential attributes of his being, and, nevertheless, to continue considering him as a man.

The analysis of the dead lettering of the protocol strengthens the opinion held by the undersigned.

Article 3 of the protocol says, in the second paragraph: "The Government of Venezuela admits its responsibility in the cases in which the claim is founded on damages caused to property or on unjust seizure thereof," etc. By *founded* it is

understood we rely on some principles, cause, or reason; therefore the claim which has no legitimate base and is not authorized by juridical canons which regulate the conduct of civilized countries is unacceptable, and the tribunal of which I have the honor to be a member must revoke it. The second clause says "or on unjust seizure thereof." The Commission, therefore, has a right to decide with regard to the justice or injustice of embargoes.

The sense given by the British agent to Article III of the protocol would convert this tribunal into a mere appraiser of damages, causing it *ipso facto* to lose its deliberative faculties. I have shown clearly that the Venezuelan and British Claims Commission possesses the right and is bound to examine and decide in each case whether the claim is legitimate and whether Venezuela is bound to pay it or not; consequently I will proceed to explain the principles and reasons why the claim of Consul C. H. de Lemos is not a just one and therefore unacceptable.

On the 15th of July, at a session of the tribunal, the learned agent for Great Britain made an oral reply to the parts of the reply of the honorable Commissioner for Venezuela that have been quoted herein, those being the parts which he considered germane to the preliminary issue by him raised, and reasserted his position as stated in the preliminary objection, and said, among other things, that it was intended in the protocol to do away with the necessity for long discussion on such points as were made in this case, and that the protocol was drawn with a view to its exclusion, and insisting that where in any case—

it was a question as to injury to property it was intended that the only question that was to be raised was to whether the injury took place.

He also said that in the reply of the Venezuelan Commissioner there had been brought in the word "founded," which was not in the protocol as written and signed by the high contracting parties, and that so much of the position of the honorable Commissioner for Venezuela as rested upon that was not well taken.

Following this oral reply, at the same sitting of the tribunal, the issue as made was submitted to the honorable Commissioners, who after discussion failed to agree. It was then passed to the umpire for his examination and decision.

Upon the preliminary case thus stated the undersigned, umpire by virtue of his appointment under said protocol, holds and decides as follows:

There can be no fair doubt that the language of the protocol contained in Article III and quoted by the learned agent for the British Government limits the discussion and determination of each case falling within its scope to the question of injury to the property of the claimant by the Venezuelan Government and the resultant compensation if injury is found.

As the case stands inquiry is limited to an interpretation of these expressions:

The Venezuelan Government admit their liability in cases where the claim is for injury to * * * property, and consequently the questions which the Mixed Commission will have to decide will only be:

(a) Whether the injury took place * * *.

The protocol bears proof throughout of the great care in its preparation and especially in the choice of words which with legal exactness and certainty state the several matters it contains. The importance of the document as a solemn agreement between independent nations and, in certain parts of it, the law of this Commission would be a warrant to assume all this; and examination confirms and emphasizes the assumption. It has also the qualities of conciseness, clearness, and

brevity. These qualities may and in the part before us do compel a careful study of the text to determine the full force and significance of the language selected.

It is the opinion of the umpire that the word "injury" was chosen because of its legal adaptation and significance and not in its colloquial sense. To think otherwise would be to hold that the seizure of property occupied in the minds of the high contracting parties and should occupy before this Commission a position different from that of injury to property, a holding not consistent, for both are governed by the same general rules and spring from similar general conditions. To make a ruling that any injury to property and none but wrongful seizure of it was the purpose and purport of the protocol does not address itself to sound judgment.

The character of the signatory parties, the importance of the document, the evident care and skill with which it was drawn, its conciseness and precision, its rigor of expression, deny the assumption of a careless and indifferent use of words where care and discrimination was most required. It is therefore the opinion of the umpire that the word "injury" was taken by the signatory parties to import a legal wrong, and in accordance with its fixed and determinate use in law as involving and importing ipso facto an *intentional wrongdoing* on the part of those responsible therefor. This supplies the conditions concerning injury to property which are found in the protocol concerning the seizure of the same, and brings the two to a common level where in the judgment of the umpire they were placed by the high contracting parties. Without this reading of the word "injury" the two parts are dissimilar without reason, and with it they are similar with reason.

To give the word its common use would impel it over any and every damage, hurt, harm, mischief, or loss that might occur to property, whether accidental, incidental, proximate or remote, wrongful or otherwise, with or without intent, good or bad, indifferently and equally. This conclusion could find no basis of sensible acceptance if we had not the assistance of the other part of the clause where responsibility and admitted liability are limited to wrongful seizure, but with this aid the conviction of its untenability is irresistible.

Seizure of property may be rightful or wrongful according to circumstances, hence it was necessary to define the character of seizure concerning which liability was admitted. The admission was intended to cover wrongful seizure only, and therefore it was so written down. The same limitation was intended in the expression "injury to property" and "injury" was selected because in itself it expressed that limitation. It is not to be considered there was intended a difference in responsibility to attach to these acts, and by the umpire's interpretation there is no difference. Without it there would be great and inexplicable difference.

By giving to this word its meaning in law and applying it to a document of peculiar legal importance drawn and carefully considered by minds of profound scholarship and erudition in law skilled in words accurate and apt, in sentences short, clear, and trenchant, it is certain we can do no violence to the thought. By adopting any other interpretation of the language used it becomes ambiguous, indiscriminative, and inapt.

The umpire regards the section quoted from Article III of the same import and value as though it had been written:

The Venezuelan Government admit their liability in cases where the claim is for a legal injury to property, and consequently the question which the Mixed Commission will have to decide will only be:
(a) Whether the legal injury took place * * *.
(b) If so, what amount of compensation is due.

The question in each case being whether by the law governing the facts in the case there has been such an injury.

The application of this holding to the case pending will admit therein discussion and determination only upon the questions thus involved. Was the shelling of Ciudad Bolívar in all the aspects of the case presented a wrongful or a rightful governmental act?

Was the result to the property of Mrs. Guillermina Dalton de Lemos under all of the facts in the case one which she must endure without recourse as a necessary sequence, or has she fixed responsibility upon Venezuela by some wrongful act or neglect of that country?

An answer to these questions determines the status of this case.

The range of inquiry and of discussion is limited but important.

To the learned and honorable gentlemen composing this Commission the umpire will not assume at this time to specify their limitations with any further particularity. A careful consideration of the question will easily determine for each the bounds within which facts and arguments are relevant, material, and competent.

DE LEMOS CASE (second reference to umpire).

(By the Umpire:)

Evidential value of statements improperly verified.

CONTENTION OF BRITISH AGENT.

PART I.

The umpire has decided that the question for decision in this case is whether the "legal" injury took place, which is then particularized as being the question whether Mrs. de Lemos has fixed responsibility upon the Venezuelan Government by some wrongful act or neglect.

Before determining how the facts of the case are to be applied in answering this question, it is necessary first to inquire what is the standard by which we are to measure whether the act is wrongful or rightful.

In all arbitration under treaty the first and often the only standard is the rules, if any, laid down in the treaty for the conduct of the arbitration and any reservation therein made. The rules of the treaty are the law by which the decisions of the tribunal are to be given.

As long as the treaty lays down definite rules, general principles of international law are irrelevant.

It may here be observed that no point in international law can be said to be entirely free from doubt, so wide is the range and difference of opinion. On the other hand the contracting parties can lay down what they please as the basis of arbitration, and must be taken to have meant what they have said.

In this case the British Government had found it necessary to enforce a blockade of the Venezuelan ports. It was not until the present treaty was signed that arrangements were made to raise the blockade. The treaty must be read in the light of that fact.

What is the standard fixed in this case, and what are the rules laid down?

First of all, in Article III comes a reference of certain claims to arbitration. If that had stood alone the standard to be applied would undoubtedly have been the rules of international law as approved by the tribunal. Had that been what the contracting parties meant they would have said: "The claims shall be referred to the Mixed Commission without reserve."

That they would have done so is plain from the fact that certain claims are referred to the Commission in those words; that is to say, that in those latter claims every principle of recognized international law can be raised by Venezuela as a defense.

As regards the former claims, on the other hand, the Venezuelan Government "admit their liability;" that is to say, they agree not to avail themselves of certain defenses. An admission of liability by a defendant is an undertaking by him not to raise certain defenses otherwise open to him.

When, therefore, a defendant power in an agreement for international arbitration "admits his liability," he thereby implies that he agrees that he is not to avail himself of the principles of international law which might otherwise be considered an answer to the claim.

In the present case the protocol has said: "The Venezuelan Government admit their liability in cases of injury to property," and the question for determination is defined as being, "Has Mrs. de Lemos fixed responsibility on Venezuela by some wrongful act or neglect of that country?"

By what standard is the word "wrongful" to be construed?

It should be construed according to the terms of the protocol; that is, in the light of the words "admit their liability."

In other words, the Venezuelan Government has admitted that, for purposes of this arbitration only, certain acts shall be assumed to be wrongful which might or might not have been judged to be so, according to the rules of international law.

There is nothing unreasonable in this. This treaty was made under pressure of a blockade. Under such circumstances what is more natural than to find that the blockading power has insisted on its own standard of right?

To give other than the above meaning to the words "admit their liability" is to say that an entire section of an international treaty, carefully drawn up, is without meaning and without bearing on the effect of the treaty.

If it be suggested that "admit their liability" means that the Venezuelan Government agrees not to raise as a defense that these specially mentioned claims are a matter for the law courts, it should be pointed out that if a claim which would otherwise be a matter for ordinary litigation is submitted to arbitration that fact alone means that all other jurisdictions are, as regards that claim, set aside and superseded by the jurisdiction of the arbitral tribunal. Therefore, the further provision that the Venezuelan Government "admit their liability" in the class of claims here referred to arbitration would be superfluous and meaningless.

It now remains to state what was intended to be the meaning of the admission of liability, in the light of the words of Article III, the circumstances under which the treaty was made, and, in cases not covered by express words, the general principles of international law.

The meaning is—

(I) The Venezuelan Government will pay compensation where damage has been intentionally or negligently caused to property by the Venezuelan Government, their agents, or persons employed by them, or by any other person for whose acts they must be held responsible, by reason of negligence, or other special circumstances.

(II) The Venezuelan Government will pay compensation wherever any right of possession or quiet enjoyment of property has been interfered with through seizure by any such persons.

The words in their natural and ordinary sense bear this meaning, and it can not be said that these were unreasonable terms for a blockading power to insist upon, from a country which has been for many years in a continuous state of revolution and unsettled government.

Moreover, to hold otherwise would be to render the whole of Article III, except the bare submission to arbitration, meaningless and superfluous.

The above interpretation should therefore be accepted.

In considering the language of the protocol two facts must be borne in mind.

(a) The language in Article III was originally proposed by Great Britain exactly as it now stands, and was accepted without alteration or demur.

(b) The rights of British subjects in Venezuela are protected by the following treaties:

(1) Treaty of Bogotá, April 18, 1825, incorporated in—

(2) Treaty of London, October 20, 1834.

In Article III of the protocol the admission of liability is, as regards persons, identical in both cases. As regards acts of injury to property, almost the only possible defense in cases likely to arise would be that of military necessity; this defense would probably be raised in cases of extensive damage, and in such cases British subjects have no special treaty protection; therefore Great Britain, holding certain opinions as to the internal affairs of Venezuela for many years past, thought it right to insist on an absolute admission of liability for the acts of persons for whom the Venezuelan Government might reasonably be liable.

In cases of seizure, British subjects are amply protected by treaty. Seizure, in contrast to injury, can in practice be justified on many and very diverse grounds, from some of which Great Britain might not wish to debar Venezuela. Great Britain, therefore, did not think it either necessary or desirable to insist on absolute liability, but thought it right that each case of seizure not covered by treaty should be judged on its merits, limiting the admission of liability to the same persons for whom Venezuela admitted responsibility in cases of injury to property.

It has been said that the words "injury to property" are not to be taken in their ordinary sense, but in their "legal" sense—that is, with some special technical meaning.

All writers agree that in interpreting treaties, words are to be taken, if possible, in their ordinary meanings.

Words are to be taken to be used in the sense in which they are commonly used. (Wheaton, p. 395.)

Common expressions and terms are to be taken according to common custom. (Halleck, Vol. I, p. 246, citing Vattel.)

It should be noted that in this protocol the word "injury" is only used in conjunction with "property."

There will be no dispute as to the common meaning of the expression "injury to property." It means no more than "damage to property."

If reference is made to Webster's Dictionary it will be seen that in the second passage quoted under the word "injury," it is used in the wide sense of damage, and under the verb "injure" it will be seen that when used in connection with property, the latter is rendered "to damage or lessen the value of, as goods or estate." In classical, then, no less than in ordinary English, when applied to inanimate things, the word is equivalent to damage. It is conceded that no word is to be pressed to include things which would destroy the sense of the whole passage in which they occur.

Injury in English is not the equivalent of "injuria" in Latin, which includes a different element. Except in exceptional circumstances "injuria" is not translated by the word "injury," but by the word "wrong," which word is its equivalent in English law. Moreover, in Roman law, "injuria," which necessarily implies some moral effect on the damaged person, is not, for that reason, joined with inanimate things in the way in which it is used here.

To sum up—

The word "wrongful" must be interpreted by reference to the protocol.

In the protocol the Venezuelan Government admit their liability, and thereby agree that for the purpose of this arbitration, injury, such as is found in the case of de Lemos, is not to be held justified—that is, they agree that for the purposes of this arbitration such injury is to be considered wrongful; therefore, the damage being admitted in principle, the claimant is entitled to an award.

PART II.

If this case has to be decided on general principles of international law without any reservation, the decision must depend upon the answer to the question whether the Venezuelan Government can prove justification. In other words, the shelling of a town being an act of violence otherwise unjustifiable, can the Venezuelan Government prove that the act was a military necessity and so escape the liability otherwise incurred?

In matters such as these the decision must depend on the facts of each particular case, and historical instances of bombardments are of little value, firstly, because it is impossible to ascertain with sufficient accuracy whether the facts were or were not identical with the case under discussion, and, secondly, because incidents which would have been considered right and proper proceedings in warfare at the beginning of the last century and even later would to-day be held most reprehensible.

Fortified places are alone liable to be besieged; towns, agglomerations of houses or villages which are open or undefended can not be attacked or bomdarded. (Wheaton, Elements of International Law, 3d ed., p. 543.)

If a town is as a whole open, with only one or two defended points (as distinguished from a fortress), and any shelling takes place, it is upon the attacking force to show that—

(1) Imperative necessity demanded the bombardment, and

(2) That the shelling was confined, both as regards direction and amount, to the necessities of the case.

As regards (1) the necessity must be proved to demonstration, and the evidence scrutinized with the utmost rigor, since the bombardment of the unfortified parts of towns is at best a cruel and barbarous proceeding, and repugnant to the principles of modern international law.

On this point reference may be made to Hall's International Law on page 556 (4th ed.), where the shelling of the private houses of even a fortified town during a siege is described as an exceptional proceeding, and clearly disapproved by the author on principle.

It may even be said that so great is the risk of needless and useless suffering and damage to noncombatants from this particular method of using shells, and this may be so widespread and so entirely beyond the control of the commander of the attack, that it is the modern rule of international law to discourage such a proceeding altogether (i. e. the shelling of the open parts of towns), and therefore, though it may be inexpedient to fix criminal responsibility on the commander, yet his government incurs the liability of having to compensate nonbelligerents for injury, should any such occur. There is nothing in the recognized modern authorities to negative the justice of this principle, and it is supported by the fact that governments not unfrequently compensate their own as well as foreign subjects for damage done under such circumstances, showing that compensation in such cases is right and proper.

If, then, a government carries out a bombardment of the kind found here, it must be prepared to show that the State was in imminent danger, that there was no other way of meeting the difficulty, and if shelling be held justified at all, it will have to go on to show that the unfortified parts, as distinguished from the forts, must be mercilessly shelled.

In considering the facts of this case it is to be noticed first of all that this town is not a fortified town in the accepted sense, nor did this shelling take place in the course of a siege (Hall, loc. cit.). This being so from 1,400 to 1,500 shells were nevertheless fired into the open parts of the town.

It is submitted that these facts at once fix the Venezuelan Government with liability, as constituting an act not sanctioned by any rule of war.

The Venezuelan Commissioner does attempt to justify the above procedure, and does so by urging the plea of military necessity; he has not, however, in any way proved this, and the difficulties in his way will appear upon consideration of the admitted facts.

In this case there was no fortified town and no siege, both of which circumstances are essential, it is submitted, to make a bombardment lawful. The shelling seems to have been for the purpose of harassing the insurgents and peaceful inhabitants indiscriminately, without at the time any prospects of being able to take or even invest the town, and in any case the shelling was in excess of the necessities of the occasion.

It is also a not unimportant consideration that the bombardment was unsuccessful, and the town was not taken in consequence; and in the second place, when the town was recently taken, no injury to private property took place. This will be seen from the following passage

taken from the official telegram from General Gomez, announcing the capture of the town:

Del bombardeo de nuestra escuadra no hubo ninguna víctima en los habitantes pacíficos ni tampoco daños en los edificios particulares.

These facts go to prove that the shelling, so far from being necessary, was utterly inexpedient and unnecessary, and the natural inference then would be that, even if there were any intention of capturing the town, the attack was made with a force so inadequate to the purpose that, instead of a serious attempt to meet a military necessity, it was a reckless, useless, and unjustifiable resort to a cruel procedure.

The danger of allowing, under such circumstances, the immunity from liability of a government for the acts of its military commanders needs no demonstration, and the disapproval of an international tribunal should be specially emphasized in the case of a country where revolution is the rule rather than the exception.

The Venezuelan Commissioner has quoted at length the work of M. Calvo. As regards the opinions of that author, it is submitted that, although his erudition and powers of research will always render his work valuable, yet his bias as a native of South America renders his judgments unsound on matters concerning civil war and the responsibility of governments.

As regards other authorities quoted or referred to in the answer of the Venezuelan Commissioner, they in no way contradict the present proposition, which is, that though there may be cases where shelling may be carried out under such circumstances that no liability attaches, there are other cases where without question liability does arise; that each case must be judged on its merits, and that upon the facts and circumstances found here the Venezuelan Government are liable for the damages claimed in this case.

As regards the contention that *locus regit actum* and the objection taken to the affidavits, reference should be made to the protocol of May 7, 1903:

The Commissioners, or, in case of their disagreement, the umpire, shall decide all claims on a basis of absolute equity without regard to objections of a technical nature or to the provisions of local legislation.

GRISANTI, *Commissioner:*

Part I of the British agent's reply is limited to supporting the interpretation which in his opinion must be given to Article III of the protocol of February 13 of the current year, and which openly contradicts the reasonable and proper interpetation given it by the honorable umpire in his very learned decision made on July 24 last. I consider this part of the statement irrelevant, because the decisions of the honorable umpire are definite and conclusive, according to the protocol signed at Washington May 7 last. Nevertheless I shall make some observations with regard to this part.

A treaty must be interpreted in the light of its own clauses, with due consideration of all circumstances preexistent to its execution and coexistent with the same; and this is precisely what the honorable umpire has done in a very masterly way.

The difference of the interpretations lies in the fact that the honorable umpire takes the word "injury" in its juridical meaning, and the learned agent for Great Britain thinks that the ordinary meaning should be attributed to this word.

To show the superiority of the former opinion over the latter, it suffices to compare the reasons set forth in support of each case.

In his award the umpire states: [a]

It is the opinion of the umpire that the word "injury" was chosen because of its legal adaptation and significance, and not in its colloquial sense. To think otherwise would be to hold that the seizure of property occupied in the minds of the high contracting parties, and should occupy before this Commission, a position different from that of injury to property, a holding not consistent, for both are governed by the same general rules and spring from similar general conditions. To make a ruling that any injury to property and none but wrongful seizure of it was the purpose and purport of the protocol does not address itself to sound judgment.

The character of the signatory parties, the importance of the document, the evident care and skill with which it was drawn, its conciseness and precision, its rigor of expression, deny the assumption of a careless and indifferent use of words where care and discrimination was most required. It is therefore the opinion of the umpire that the word "injury" was taken by the signatory parties to import a legal wrong and in accordance with its fixed and determinate use in law as involving and imparting ipso facto an *intentional wrongdoing* on the part of those responsible therefor. This supplies the conditions concerning injury to property which are found in the protocol concerning the seizure of the same, and brings the two to a common level where, in the judgment of the umpire, they were placed by the high contracting parties. Without this reading of the word "injury" the two parts are dissimilar without reason, and with it they are similar with reason.

The learned agent for Great Britain states: [b]

It has been said that the words "injury to property" are not to be taken in their ordinary sense, but in their legal sense—that is, with some special technical meaning.

All writers agree that in interpreting treaties words are to be taken, if possible, in their ordinary meanings. "Words are to be taken to be used in the sense in which they are commonly used." (Wheaton, p. 395.)

"Common expressions and terms are to be taken according to common custom." (Halleck, p. 298.)

It should be noted that in this protocol the word "injury" is only used in conjunction with property.

There will be no dispute as to the common meaning of the expression "injury to property." It means no more than "damage to property."

If reference is made to Webster's Dictionary it will be seen that in the second passage quoted under the word "injury," it is used in the wide sense of damage, and under the verb "injure" it will be seen that when used in connection with property the latter is rendered "to damage or lessen the value of, as goods or estate," etc.

Although it is true that the common words used in a treaty should be taken in their ordinary meaning, this rule can not apply to technical terms; to which a meaning can not be attached other than the one they have in the science or art in which they belong.

Dans tous les cas d'amphibologie ou d'équivoque les mots doivent en général être pris dans leur acception ordinaire, dans leur signification usuelle, et non dans celle que leur donnent les savants ou les grammairiens; toutefois, les mots empruntés aux arts et aux sciences doivent s'interpreter suivant leur sens technique et conformément aux définitions données par les hommes compétents.—(Calvo, Le Droit International, Théorique et Pratique, 3e éd., Vol. I, p. 670, sec. 715.)

Technical terms must [says Bello] be taken in the proper sense given them by the professors of the respective science or art, except when it is known the author was not well versed in the matter. (Principles of International Law, 4th ed., p. 136.)

Can it be maintained with a semblance of reason that the eminent men who wrote and signed the protocol did not have a profound knowledge of the juridic meaning of the technical words they used in it? Such an opinion is inadmissible.

On the other hand, accepting the interpretation of the learned agent for Great Britain, the result would be an inexplicable difference in the cases of the claim being for the seizure of property and those being

---

[a] Page 309. [b] Page 312.

founded on injury to the same. In the first instance it is a necessary condition for the fixing of liability on the Government that the seizure be wrongful; in the second place that the liability always attaches, whatever be the nature of the injury, justified or unjustified, intentional or accidental.

The learned agent for Great Britain persists in trying to prove said difference, but he has not succeeded. The principles of law are adverse to him, and it is not possible to struggle against them successfully.

Ninety-eight per cent of all the claims are for injury to property, and according to the idea of the agent for Great Britain, said claims are already decided by the protocol in favor of British subjects. If this were so, what would the functions of this Mixed Commission be? With what object would England have sent out a lawyer of such great learning as His Britannic Majesty's agent, if it were not to argue on the grounds of justice and law? Reason can not conceive a court that does not pass judgment nor a juridic document from which law is excluded.

The interpretation insisted on by the British agent leads to an absurdity, and must therefore be rejected.

It is necessary to set aside every interpretation that might lead to absurdity. (Bello, International Law, 4th ed., p. 136.)

PART II.

Ciudad Bolívar revolted at the time when a revolution had broken out against the Government in the whole Republic. The Government was under the unavoidable obligation of reducing the insurgent city, and this they had to carry out with the only means at their disposal, which were the war ships at anchor in the port. The attention of the Government was occupied by many and serious events; it was forced to repair actively and energetically to different places to quell the civil war which was devastating the country; it was obliged to redouble its efforts. Perhaps the forces employed were not sufficient to subject the rebel city to the dominion of law; perhaps it was thought that the rebels would not offer such vigorous and indomitable resistance as they did. These circumstances, impossible to be foreseen or avoided, concur in proving, with irrefutable evidence, that the shelling of the city was not a deliberate act of the Government, but an act imperatively demanded by the force of circumstances.

On the other hand, war is nothing but the struggle of force against force, and the events which take place must not be considered as amid the repose and tranquillity of a cabinet, nor in the light of a high juridic philosophy. European and American statesmen have strived in vain, with extraordinary efforts and unremitting zeal, to mollify the conduct of war—it continues violating rights—wasting the treasure of civilization.

From the failure of the assault on the city, the British agent infers that it was not carried out with force proportioned to such an undertaking. The rigid rules of logic are not always applicable to affairs pertaining to war, and it is not possible, in all cases, to reach definite conclusions from the results of battles. History teaches us that military operations, maturely premeditated and executed with the most suitable means to attain a happy end, have failed, and that victory has at times been attained by plans emanating from a diseased and delirious mind.

Neither is it a juridic principle that unfortified cities should not be bombarded. The rule is that every city that offers resistance, be it fortified or not, must be attacked with the means available, including bombardment; and that it is illegal to attack a city that opens its gates to the foe.

Toute ville qui se défend, peut, quoique ville ouverte et non fortifiée, être attaquée et soumise comme le serait une fortification; mais il faut une résistance sérieuse, une véritable défense se manifestant par des maisons crénelées, des barricades, etc. Quelques coups de fusils sont insuffisants pour autoriser le recours au bombardement. Le siège et les bombardements des places fortes et défendues est une mesure de guerre légitime et même nécessaire. La légitimité de l'agression ne dépend pas du fait de la fortification, mais de la défense à main armée d'une place. Il est illégitime de bombarder une forteresse qui ouvre ses ports. Il est nécessaire d'attaquer une ville ouverte qui est défendu militairement. Il est défendu de bombarder villes ouvertes qui ne prennent aucune part à la guerre. Toutes les autorités du Droit International sont d'accord là-dessus. (Manuel de Droit International Public, par Henri Bonfils, 3e ed., 1901, p. 608, sec. 1082.)

In my statement of July 11, last, I maintained, moreover, that the claim is not proved. In fact, Consul de Lemos brings forward as a proof, in the first place, his own testimony. As regards this point, I stated:

As a general rule, the testimony of a person in support of a fact is not admissible when that person is greatly interested in the establishment of said fact.

In the second place, the testimony of Benjamin Waithe and Antonio Villalobo, delivered in presence of the consul, Mr. de Lemos himself, is absolutely void;

and with regard to this testimony the undersigned stated the following opinion:

The said consul can not be a judge in his own cause, and on receiving and authorizing those declarations he has sought to be one, trying to assume two positions entirely incompatible. Besides, in the taking of the proofs, the universally acknowledged and respected rule of locus regit actum has been violated.

If my observations with regard to the testimony presented as proof are carefully read, it will be seen that these observations are not based on dispositions of any determined legislation, but on inferences drawn from a close study of the frailty of human nature. When a man is interested in testifying that a certain act took place his testimony can not inspire firm belief. The United States has fixed wise rules to which the claims against foreign governments are subject, and among them is the one copied below, which is very pertinent to the matter under consideration.

6. All testimony should be in writing and upon oath or affirmation, duly administered according to the laws of the place where the same is taken, by a magistrate or other person competent by such laws to take depositions, having no interest in the claim to which the testimony relates and not being the agent or attorney of any person having such interest, and it must be certified by him that such is the case. The credibility of the affiant or deponent, if known to such magistrate or other person authorized to take such testimony, should be certified by him; and, if not known, should be certified on the same paper upon oath by some other person known to such magistrate, having no interest in such claim and not being the agent or attorney of any person having such interest, whose credibility must be certified by such magistrate. The deposition should be reduced to writing by the person taking the same, or by some person in his presence having no interest and not being the agent or attorney of any person having an interest in the claim, and should be carefully read to the deponent by the magistrate before being signed by him, and this should be certified. (Department of State Circular, March 6, 1901.)

The act of taking the depositions of Messrs. Waithe and Villalobo, done by the consul, Mr. de Lemos, thus usurping functions which

belong to the local courts of justice, is an attack upon the sovereignty of Venezuela, and therefore the Venezuelan commissioner hereby protests energetically against the behavior of the consul, Mr. de Lemos, which behavior constitutes the infringement of laws he was under the obligation of respecting, not only in his capacity as a resident, but also in his capacity as a consul.

It is the opinion of the writer that the claim of Consul de Lemos should be disallowed.

PLUMLEY, *Umpire:*

When this case was sent to the umpire for his decision it was requested by both Governments that the umpire should take his earliest opportunity to indicate to the tribunal whether he should require more evidence on behalf of the claimant than was placed before him in the papers filed in the case. Answering this proper request the umpire takes this occasion to state his position thereon.

When the case was first presented to the tribunal it contained a memorial, the printed affidavit of Consul de Lemos, and the declarations of Benjamin Waithe and of Antonio Villalobo. Upon the facts therein stated the case rested.

That portion of the affidavit of Charles Herman de Lemos, which states the fact of bombardment of Ciudad Bolívar on the 20th, 21st, and 22d of August, 1902, by the Venezuelan gunboats *Bolívar* and *Restaurador*, is a matter of history.

At the time that the preliminary objection of His Britannic Majesty's agent was made there was before the tribunal the answer of F. Arroyo-Parejo, the Venezuelan agent before this tribunal, which was made on the 18th of June, 1903. In this answer is to be found the following:

> The history of this case is as follows:
> A garrison in the capital of the State of Bolívar, disloyal to their duties, rebelled against the National Government legally constituted. The Government, not only in virtue of the right of defense, but in the fulfillment of a duty of a pressing nature, on account of the irreconcilable attitude of the revolutionists, ordered the attack of the city, which attack was put into execution by maritime forces on August 20, 21, and 22, 1902. The consequence of the attack, a natural and unavoidable one, was that several houses of the city suffered damages, among them two which belonged to the claimant's wife.

Then follows in the answer propositions of law governing these facts and claiming therefrom immunity to Venezuela as claimed by said learned agent.

To the preliminary objection of His Britannic Majesty's agent the honorable Commissioner for Venezuela made reply, and in such reply the historical facts were admitted and extended in paragraphs 7 and 8, followed by an argument concerning the immunity of Venezuela under such facts, with citations and quotations of authority therefor, and at the bottom of the seventh page and throughout the eighth page of said reply the question is raised that the claim is not legally in proof for the reasons therein given.

Article 7 of the rules of procedure provides for the written answer of the Venezuelan Commissioner and states what such answer may and should contain. In effect it requires that there and then be raised all of the exceptions and objections to the testimony, of form or fact, which it may seem necessary to raise at any time in said cause, and to therein set forth in addition the counter facts relied upon by Venezuela

in refutation of the claimant's proofs and to bring into the record with such answer all such evidential facts as are by him deemed important.

Articles 9 and 10 of the said rules provide for the registry of such answer, notice to the British agent, his right of reply thereto within fifteen days, its presentation and registry and notice to the Venezuelan Commissioner or agent, in whom there is a right of counter reply within fifteen days.

In this case the answer was made by the Venezuelan agent instead of the Commissioner, but it was the answer provided for under article 7 of the rules and was received as such. It conceded all the facts alleged by the claimant and stated the facts upon which Venezuela relied for its protection in the given case, and to these facts brought upon the record by the Venezuelan agent the reply of the British agent was in the way of a preliminary objection raising the questions of law and equity upon the facts stated in the claim and in the answer of the Venezuelan agent, which reply admitted for the purpose of that objection the truth of the facts as stated by the agent of Venezuela in his answer.

When, therefore, there is found in the counter reply of the honorable Commissioner for Venezuela the points referred to above they must be read in view of the concessions as made by the Venezuelan agent in his answer, the logical results flowing from the British agent's preliminary objection, together with the status of the case and the rights of the parties as established by the rules of procedure above referred to.

It was the judgment of the umpire at the time of rendering his interlocutory opinion that it was not competent for, neither was it the intention of, the honorable Commissioner for Venezuela to attack or reverse the concessions and admissions made by the learned agent for Venezuela in his answer, but simply to call attention to the irregularities and informalities of the said testimony. It followed, therefore, that the umpire in such opinion on the first and second pages thereof assumed as admitted facts the claim as made in the affidavit of Mr. de Lemos.

Subsequent to the filing of such opinion by the umpire the learned British agent presented his counter reply to the aforementioned answer of the Venezuelan agent and reply of the honorable Venezuelan Commissioner, and this was followed by the counter reply of the honorable Commissioner for Venezuela, restating his objections to the proof of the claim and quoting in part from his first reply and including a quotation from the rules of the United States of America prescribed for the taking of testimony in such matters. No one, in the opinion of the umpire, would question the wisdom and value of the rule thus quoted.

In said counter reply of the honorable Commissioner for Venezuela he also makes the point that the act of taking the depositions of Messrs. Waithe and Villalobo, effectuated by Consul de Lemos, was in usurpation of functions belonging to the local courts of justice and was thereby an attack upon the sovereignty of Venezuela.

The umpire has thus brought upon the record the matters deemed by him substantial and important in the determination of the immediate question before him, which is: Does he require further evidence on behalf of the claimant in order to be satisfied of the truthfulness of his case?

The historical facts are unquestioned, and to those historical facts may be added the consulship of Mr. de Lemos, his residence and his nativity, as all these matters must be in the knowledge and possession of the Venezuelan Government, since for about twenty-five years he has been the consul of Great Britain resident at Ciudad Bolívar, and under the exequatur issued by the Venezuelan Government.

The matters to be determined from the affidavit of Consul de Lemos are the name of his wife, her ownership of the property in question, the fact that 1,400 or 1,500 shells were thrown into the heart of the city, and that her buildings were injured thereby to the amount of £300.

The declarations of Waithe and Villalobo, in the opinion of the umpire, amount to no more than a carefully written statement over their respective signatures and are accepted by him as such only. They are not affidavits and they are not formal declarations. Mr. de Lemos could not in this case act in his official capacity and thereby make them such; but they are written documents or statements, and being such they come clearly within the provision of the protocol which provides that the Commissioners or umpire, as the case may be,

shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the Governments, respectively, in support of or in answer to any claim;

and

shall decide all claims upon a basis of absolute equity without regard to objections of a technical nature or the provisions of local legislation.

The evidential value of such statements is left to the decision of the tribunal when it considers them; but there is no question that they are to be received and to be given such value as in the given case they seem to be worth.

The facts testified to by Mr. de Lemos are not obscure in their character, not at all dependent upon his personal knowledge for their establishment, and are easily disproved if untrue. The claimed injury resulted from the bombardment, which is a historical fact, the official particulars of which are unquestionably in the possession of the Government of Venezuela, and it would be impossible to make such claims of injury and not have them susceptible to immediate denial and disproof if untrue, since the damage if it existed was easy to be seen, and if not existent easy to be determined to the contrary. The fact of ownership is a matter of registry as well as of general notoriety in that vicinity, and thus easily susceptible of denial and disproof if untrue. There is nothing about the case as it is presented to the umpire to raise a suspicion of its verity, and there is nothing to suggest any purpose to defraud Venezuela or to mislead the umpire in arriving at a just decision. The case seems to be shorn of such characteristics.

Taking into consideration the elements in this case as presented, including the concessions and admissions of the learned agent for Venezuela, and the fact that neither agent or Commissioner for Venezuela has denied anywhere that the facts are as alleged by the claimant, the ease with which the claim could have been refuted if not well laid, the general reasonableness of the facts asserted, the official position of Consul de Lemos, all tend to eliminate doubts from the mind of the umpire, to give respectability and character to the claim, and

to permit him to say that he is satisfied that the facts are as alleged and to find the same to be true, leaving only for determination the questions raised as to the law and equity in the case.

The umpire will here state that it must be considered there was no intended offense to Venezuela in the act of Consul de Lemos in authenticating the declarations of the two witnesses used in this case, since it is to be remembered that from the time of the injury to these buildings until within a few days there have been no courts at Ciudad Bolívar loyal to the Venezuelan Government or representative thereof, and it was expressly stated in open tribunal by the learned British agent that these declarations were thus presented only because of the impossibility of obtaining any evidence through the regular procedure of Venezuelan law. It is in recognition of this state of affairs that the umpire more readily consents to their consideration.

Notwithstanding this holding, if the honorable Commissioner for Venezuela considers that the fact is not that 1,500 shells substantially were thrown into the heart of the city on the occasion of the bombardment in August, 1902; that Mrs. de Lemos is not the owner of the houses in question; that they were not damaged in the way and to the extent substantially as claimed in the affidavit of Consul de Lemos; that injustice would be done to Venezuela by assuming such to be the facts, and that he desires opportunity to show that such are not the facts, the umpire may deem it necessary on a proper showing to grant an opportunity at this late hour for such proof, and in such event may deem it proper to permit the British agent to fortify his evidence by cumulative and rebuttal proof if he should desire.

SELWYN CASE.

Within the limits prescribed by the convention, an international tribunal created thereunder is a tribunal superior to the local courts, and it is not affected jurisdictionally by the fact that a question submitted for its decision is pending in the courts of one of the nations. Such international tribunal has power to act without reference thereto and, if judgment has been pronounced by such court, to disregard the same so far as it affects the indemnity to the individual, and has power to make an award in addition thereto or in aid thereof as in the given case justice may require.[a]

PLUMLEY, *Umpire:*

This case came to the umpire upon the disagreement of the honorable commissioners over the jurisdictional question raised by the Government of Venezuela.

In determining this question it is necessary that the umpire assume the truth of all the assertions in the claim. This is in no sense finding that they are true, but an assumption merely, and wholly for the purpose of this preliminary inquiry, and in event the jurisdiction is held this assumption ceases ipso facto and absolutely.

The grounds of objection to the jurisdiction of this tribunal as stated are three:

(1) That, if this claim is admissible otherwise, it is barred by the fact that a suit is now pending in the local courts, wherein the claimant is the plaintiff and Venezuela is the defendant, based upon the same right of action; and having elected to pursue his remedy there he can not change the forum of his own selection and present his claim to this Commission, especially since there has been no delay in court except through his own inaction.

---

[a] See additional authorities, pp. 326, 327.

(2) A certain provision of the contract between the Government and the claimant, because of which contract this claim exists, the language of which provision follows: "Any doubts and controversies that may arise regarding the spirit or execution of this present contract will be settled by the tribunals of the Republic and according to their laws without their being in any case a matter for an international claim."

(3) That this is a claim under a contract and that controversies of a contractual character, excepting the railway claims, are not submitted to this Commission, but instead, injuries to property of British subjects and matters akin thereto, as is to be seen by inspection of the protocol, which by specifically including the railway contractual claims inferentially and impliedly excludes all other contract claims.

Pending a decision in court parties may always agree to submit to arbitration the whole or any substantive part of the matter or matters in issue; and when the award is made it can be pleaded by the defendant in bar of the action in whole or in part, according as the submission was of a whole or a part of the controversy; or, if the submission is such, it may be reported into court in aid thereof or for its final action thereon, but always to the extent of the submission it supersedes action by the court. (Amer. & Eng. Encyc. of Law, 2d ed., vol. 2, 562–568. Also the notes on these pages for cases cited and decisions quoted in support of this proposition.)

It is the judgment of the umpire that the rule above stated is the same, so far as it touches the question before this Commission, where the arbitration is between nations and the submission concerns private claims.

International arbitration is not affected jurisdictionally by the fact that the same question is in the courts of one of the nations. Such international tribunal has power to act without reference thereto, and if judgment has been pronounced by such court, to disregard the same so far as it affects the indemnity to the individual, and has power to make an award in addition thereto or in aid thereof as in the given case justice may require.

Within the limits prescribed by the convention constituting it the parties have created a tribunal superior to the local courts.

Concerning the particular feature here involved this is the limit there set:

The Venezuelan and British Governments agree that the other British claims, including claims by British subjects other than those dealt with in Article VI hereof, and including those preferred by the railway companies, shall, *unless otherwise satisfied*, be referred to a Mixed Commission constituted in the manner defined in Article IV of this protocol and which shall examine the claims and decide upon the amount to be awarded in satisfaction of each claim. (Art. III of the protocol of Feb. 13, 1903, and see also par. 1 of the supplementary agreement of May 7.)

It would seem that the claim being otherwise admissible at the time of the making of the treaty, it is not to be affected by anything save its subsequent payment or satisfaction. Whether it is actually pending in court or standing in judgment rendered is not made the test. Instead, and only, the criterion agreed upon is payment or satisfaction.

Under article 7 of the treaty between the United States and Great Britain of November 19, 1794, a Mixed Commission was provided for and given the power to award compensation to claimants who could not obtain it "in the ordinary course of justice."

The especial claims to be considered were those founded on cases of illegal and irregular capture or condemnation of the vessels and property of citizens of the United States. In the case of the *Sally*, Hayes, master, which was pending in the admiralty court at the time it was submitted to this Mixed Commission, the British Commissioners objected to its consideration, "as proceedings were still pending before the lords commissioners of appeal. * * * It did not sufficiently appear that compensation might not at the time of concluding the treaty and might not still be had in

the courts by judicial proceedings, * * * and that the consideration of the merits of the claim should be postponed until it should further appear that compensation could not be obtained in the ordinary course of justice." The American Commissioners, the umpire agreeing with them, contended to the contrary, and a majority of the Board held in accordance with the latters' contention. The British Commissioners then entered a declaration on the journals of the Board "that they did not think themselves competent under the words of the treaty or of the commission under which they acted to take any share, without the special instruction of the King's ministers, in the decision of any cases in which judicial proceedings were still pending in the ordinary course of justice." And in the course of the discussion of the cases before them it was held in general by the agent for Great Britain that in the class of actions that had been decided in the high court of appeals the Commissioners had no jurisdiction because the sentences of that court were definitive; in the cases still pending before the high court of admiralty and the high court of appeals that the Commissioners had no jurisdiction because, if entitled to compensation, it might be obtained in the ordinary courts before which for various reasons appeals had not been claimed or prosecuted; that the Commissioners had no jurisdiction because it was in consequence of the neglect of the claimants that they were unable to obtain compensation in the ordinary course of justice.

The matter in dispute was referred by agreement to the lord chancellor, who held that in cases of condemnation in the high court of appeals the decrees must stand so far as they affected the property, but there might exist a fair and equitable claim upon the King's treasury under the provisions of the treaty for complete compensation for the losses sustained by said condemnation. Where there had been decrees of restitution, but without costs or damages, or of condemnation without freight or costs, it might be just that the claimant might receive costs, freight, and damages, and the Commissioners had jurisdiction. In the case where the right of appeal had been lost the claimant might be able in a satisfactory manner to account before the Commissioners for his not having come personally forward with the appeal, and this was undoubtedly a case within the provisions of the treaty. The property could not be restored, but there might be an award, and it must be paid out of His Majesty's treasury. The Commissioners were not a court of appeal above the high court of appeals. They were, however, competent to examine questions decided by the high court of appeals as well as in other cases described in the treaty, and they could give redress, not by reversing the decrees and restoring the identical property, but by awarding compensation.

These decisions were substantially the claims of the American Commissioners and the umpire, so that we have the authority of both England and the United States upon that question. The English authority being a concession against their own pecuniary interests gives it greater force aside from the high judicial character of both the lord chancellor, the American Commissioners, and the umpire. (Moore, 2304, et seq.; 326, et seq.)

Wharton, in his International Law Digest, section 242, volume 2, says:

"It was maintained before the British and American Mixed Commission sitting in London under the treaty of 1794 that a decision of a British prize court estopped the party against whom it was made from proceedings, when a foreigner, through his own government. This was contested by Mr. Pinkney, and his position was affirmed by the arbitration, acting under the advice of Lord Chancellor Loughborough, and is now accepted law."

See the *Alsop* claims, Moore, 1627–1628.

See case of the *Neptune*, Moore, 3076 et seq.

See opinion of Mr. Pinkney on the same case, Moore, 3083, et seq.

See Garrison's case in Moore, 3129, decision by Lieber, umpire, in the United States-Mexican Commission, in which appears the following language: "It is objected that the case has been adjudicated by the proper Mexican court and can not be reopened before this Commission; that therefore it ought to be dismissed. It is true that it is a matter of the greatest political and international delicacy for one country to disacknowledge the judicial decisions of a court of another country, which nevertheless the law of nations universally allows in extreme cases. *It has done so from the times of Hugo Grotius.*

In the case of Reed & Fry, United States-Mexican Commission, convention of July 4, 1868, the case was heard of a vessel seized in Mexico by the proper officers and libeled in a court of competent jurisdiction on the charge of violating the revenue laws, and the court decreed confiscation. The Commission heard the case, found that the court should be sustained, and dismissed the claim. This, therefore, is authority on the the question of jurisdiction after judgment by a local court. Idem., 3132.

See Bronner *v.* Mexico, Moore, 3134, United States-Mexico, convention of 1868, Sir Edward Thornton, umpire, where the question in issue had been passed upon adversely to the claimant by the courts of Mexico and an award was given in his favor by the umpire.

See case of J. L. & Co., in same Commission, before the same umpire, who considered the merits of the case and disallowed the claim.

In Moore, 3148, case of Young, Smith & Co. *v.* Spain, United States-Spain, convention of November 10, 1879, Baron Blanc, umpire, holds that "article 5 of the agreement of 1871 confers upon this Commission jurisdiction of all claims for injuries of that character. It makes no exception against those parties who may not have resorted to or *exhausted the remedies* offered by the courts of Cuba. The umpire, therefore, is constrained to hold that this is a proper case for the exercise of the jurisdiction of the Commission, and that he is himself bound to decide upon the merits of the demand presented by the claimants."

"Where the claimant in a foreign country has, by the law of such country, the choice of either the judicial or the administrative branch through which to seek relief and selects the latter, this does not make the arbitrary decision of the latter against him final and conclusive." (Mr. Fish, Sec. of State, to Mr. Nelson, Jan. 2, 1873.)

The same position of the United States with regard to the decision of the courts not being a bar to the claim by a neutral, which was held in the Commission with Great Britain, above referred to, was taken by the United States in claims growing out of the French Revolution, and was conceded by the United States when the relations were with reference to the claims arising from the late civil war (see Wharton, vol. 3, sec. 242, Appendix), and was further insisted upon by Mr. Bayard, Secretary of State, discussing a similar question with Mexico, who claimed that the matter had been duly adjudicated upon and was therefore barred from further consideration. (See sec. 243, page 974, in vol. 3 of Wharton.)

"It may be said that the claimants, according to the ordinary practice in British courts, had a right of appeal to the lords of appeal, and that, as they did not avail themselves of that right, they must be presumed to have acquiesced in the decision of the admiralty courts. * * * [To this] it may be answered that the claimants have incurred great expense in the prosecution of their rights before the admiralty court and had not the means for carrying the cause further in the form in which it was there presented." (Wharton, vol. 2, sec. 241, p. 677.)

Indeed, since objection No. 1 applied not at all to the merits of the case or its rightfulness as a claim in itself, it may well be regarded as falling within the class of technical objections which this Commission is expressly instructed not to regard by the provisions of the British-Venezuelan agreement of May 7, 1903.

To hold that this Commission has jurisdiction of a claim notwithstanding its pendency in the courts of Venezuela is in harmony with the action of other commissions now sitting in Caracas.[a]

If the pending suit of Selwyn in the local courts is based upon the contract, then, as it appears later in the opinion of the umpire, this claim is fundamentally different from the pending action, and hence from the sole objection that his action is so pending the question of jurisdiction can not be successfully interposed, even if the umpire considered, as he does not, that if the pending action and the claim were alike objection No. 1 must be sustained.

For the reasons above given it is the opinion of the umpire that objection No. 1 can not be sustained.

Concerning the next objection, the umpire bases his decision upon the ground that the claim before him has in no particular to deal with "any doubts and controversies * * * regarding the spirit or execution of" the contract in which such terms appear. His reasons therefor will appear in his statement concerning preliminary objection No. 3.

The fundamental ground of this claim as presented is that the claimant was deprived of valuable rights, of moneys, properties, prop-

[a] Rudloff case, p. 193.

erty, and rights of property by an act of the Government which he was powerless to prevent and for which he claims reimbursement. This act of the Government may have proceeded from the highest reasons of public policy and with the largest regard for the State and its interests; but when from the necessity or policy of the Government it appropriates or destroys the property or property rights of an alien it is held to make full and adequate recompense therefor.

Pradier-Fodéré (sec. 402) says:

> It is the duty of every state to protect its citizens abroad * * *. It owes them this protection when the foreign state has proceeded against them in violation of principles of international law—if, for example, a foreign state has despoiled them of their property.

Vattel says:

> Whoever uses a citizen ill indirectly offends the state, which is bound to protect the citizen, and the sovereign of the latter should avenge his wrongs, punish the aggressor, and, if possible, oblige him to make full reparation; since otherwise the citizen would not obtain the great end of the civil association, which is safety. * * * But if a nation or its chief approves and ratifies the act of the individual, it then becomes a public concern, and the injured party is to consider the nation as the real author of the injury. (Book 2, ch. 6, secs. 72 and 74.)

Halleck says:

> There can be no doubt with respect to its [the state's] responsibility for the acts of its rulers, whether they belong to the executive, legislative, or judicial department of the Government, so far as the acts are done in their official capacity. (International Law, 3d ed., Vol. I, Chap. XIII, p. 442.)

How much of the claim comes under this head it is not necessary to consider. The question of jurisdiction is determined if in any part the case falls within this class. The umpire has above stated that such is the fundamental feature of this claim, and hence that it is not a matter of contract, and is open to neither of the last two objections of Venezuela.

Holding thus, it does not become necessary, and it is therefore inexpedient, to pass upon the contention of the respondent Government that the protocol does not include matters of contract.

As stated at the outset of this opinion, the umpire does not herein pass at all upon the merits of the claimant's case, but only upon the jurisdictional question, assuming, as he must for such purpose, that the facts are as stated in the reclamation. What in truth the facts are remains to be determined upon the full proofs, which are in no sense prejudiced or predetermined by this opinion. That they may be ascertained and settled by this Commission in equity and justice, the umpire returns the case to the Commissioners for their consideration and action.

ADDITIONAL AUTHORITIES FURNISHED BY UMPIRE PLUMLEY.

(1) Wharton, vol. 2, sec. 238, p. 671: The defense of res adjudicata does not apply to cases where the judgment set up is in violation of international law.

(2) Wharton, vol. 3, sec. 329*a*, p. 198 (prize courts): The prevalent opinion now is, that in international controversies a sovereign can no more protect himself by a decision in his favor by courts established by him, even though they be prize courts, than he can by the action of any other department of his government.

(3) Wharton, vol. 2, sec. 238, p. 670: A suit brought in Honduras courts by a citizen of the United States to recover estates in Honduras must be left to the determination of the courts in which it is brought, unless a positive denial of justice be shown. (Mr. Frelinghuysen, Sec. of State, to Mr. Hall, June 18, 1882.)

(4) Wharton, vol. 2, sec. 242, p. 697 (case of Wheelock *v.* Venezuela): A for-

eigner's right to ask and receive the protection of his government does not depend upon the local law, but upon the law of his own country. * * *

(5) Wharton, vol. 2, sec. 238, p. 670: A collusive or irregular judgment by a foreign court is no bar to diplomatic proceedings by the sovereign of the plaintiff against the sovereign of the court rendering the judgment. (Mr. Evarts, Sec. of State, to Mr. Foster, Apr. 19, 1879.)

(6) Wharton, vol. 2, sec. 238, p. 679: A claimant in a foreign state is not required to exhaust justice in such state when there is there no justice to exhaust. (Mr. Fish, Sec. of State, to Mr. Pile, May 8, 1872. MSS. Inst. Vene.)

(7) 13 Howard, 115 (Mitchell *v.* Harmony): Private property may be taken by a military commander for public use, in cases of necessity, or to prevent it from falling into the hands of the enemy, but the necessity must be urgent, such as will admit of no delay, or the danger must be immediate and impending. But in such cases the Government is bound to make full compensation to the owner.

(8) 13 Wall., 623 (see Wharton, vol. 3, sec. 328, p. 247): Where private property is impressed into public use during an emergency, such as a war, a contract is implied on the part of the government to make compensation to the owner.

(9) Wharton, vol. 2, sec. 248, p. 710: If the nation disposes of the possessions of an individual, the alienation will be valid for the same reason; but justice demands that the individual be recompensed out of the public money. (Vattel, Book 1, Ch. 22, sec. 244.)

(10) Moore, 3720–3721 (Elliott's case; Lieber, umpire): It was held that General Corona had undoubtedly a right to appropriate Elliott's property if necessary for defense or to devastate it, if the war required it, but the Government must pay.

(11) Wharton, vol. 2, sec. 248, p. 711 (Meade case): On these facts the following conclusions were reached by the Court of Claims:

* * * * * * *

A debt due to an American citizen from a foreign government is as much property as houses and lands, and when taken for public use is to be paid in the same manner.

The cases hereinbefore quoted and referred to were considered by the umpire in making up his decision in this case, and are submitted to be incorporated into said opinion as authorities in support of the same. Nos. 1, 2, 3, 4, 5, and 6 go to sustain the position of the umpire as to objection No. 1. Nos. 7, 8, 9, 10, and 11, his position as to objections Nos. 2 and 3.

STEVENSON CASE.

An international claim is not barred by prescription when it appears that there has been no laches on the part of claimant or his government in its presentation for payment.

PLUMLEY, *Umpire:*

This case came to the umpire solely on the preliminary objection of the honorable Commissioner for Venezuela that it was barred by limitation. The history of the case discloses that it was presented to the British Mixed Commission sitting at Caracas in 1869; that the Venezuelan Commissioner refused to consider the case on the ground that the proofs were formalized posterior to the date of the convention for the settlement of pending claims. It resulted that this, with several other cases similarly objected to, was withdrawn on the part of Her Majesty's Government, with the express reservation that such withdrawal was to be without prejudice to the claims.

Reference is made to this claim by Her Majesty's minister resident at Caracas in a letter dated at Caracas, April 25, 1872, and addressed to the claimant at Trinidad, in which, after stating the course of the claim before the Commission, this statement appears:

and that since the Venezuelan Government have declared that owing to civil warfare they can not attend to the arrangement or payment of foreign claims.

There is further reference to this claim by the British foreign office May 28, 1888, in a letter addressed to Mrs. Julia Stevenson, of Trinidad, widow of the late claimant, answering what is termed therein as her petition in regard to this claim, of date the 26th of April, 1888, and this extract is taken from such answer:

I am to inform you that since the withdrawal of this claim from the Mixed Commission of 1869 it has, together with many others, been classed as unrecognized by the Government of Venezuela. These "unrecognized" claims have not been lost sight of by Her Majesty's Government, but it is clear there is no chance of payment of any individual claim being made unless by a general settlement of all, and of this there is at present no prospect. Under these circumstances his lordship regrets that he is unable to hold out any hope of an early settlement.

It appears from the facts gathered with reference to the presentation before the Mixed Commission of 1869 and from the letters from which extracts have been quoted that the Venezuelan Government was in 1869, if not before, fully advised of the existence of this claim and of the details of which it was composed; that the Venezuelan Government had been addressed upon the subject of this claim since the withdrawal from the Mixed Commission, and had announced to the representative of the British Government that, owing to civil warfare, they could not attend to the arrangement or payment of it. By reference to the communication of May 28, 1868, it is learned that, some time subsequent to the communication of 1872 and the date of this last-named letter, this case had been brought up before the Venezuelan Government, and it was found placed among their list of "unrecognized" claims. It is also learned from this later communication that Her Majesty's Government was keeping track of this claim with others of its class and was simply waiting for such time as there could be made a general settlement of all such claims. Pursuant to that purpose, the British Government has taken advantage of this its first opportunity, and has presented the claim agreeably to its plan and its assurance to the claimant's widow.

It also appears that both of these communications were in reply to letters of inquiry or of petition, first from the claimant himself and lastly from his widow.

From this statement of the case as it appears before this Commission there can be claimed with right no laches on the part of either the British Government or of the claimant or his estate.

When a claim is internationally presented for the first time after a long lapse of time, there arise both a presumption and a fact. The presumption, more or less strong according to the attending circumstances, is that there is some lack of honesty in the claim, either that there was never a basis for it or that it has been paid. The fact is that by the delay in making the claim the opposing party—in this case the Government—is prevented from accumulating the evidence on its part which would oppose the claim, and on this fact arises another presumption that it could have been adduced. In such a case the delay of the claimant, if it did not establish the presumption just referred to, would work injustice and inequity in its relation to the respondent Government.

This case presents neither of these features. When first produced before the Mixed Commission of 1869, the claim for $13,277.60 for injuries to the Río de Oro estate was alleged to be of date February, 1859, as was also the claim for $77,645 on account of the La Corona, Mapirito, and San Jáime estate. The claim of the Bucural estate for

$43,660.80 was laid as happening in 1863, and the claim of the San Jacinto estate for $1,260 was laid in 1869, March 6. So that the earliest claim was about ten years old, the next in order only six years, while the last claim was so late as to have been in fact subsequent to the convention establishing that Commission. Here was placed before the Government a careful list, in number and character, of the losses suffered, and the different estates on which each separate claim rested, with the dates on which the different claims arose. This gave the respondent Government an opportunity to acquaint itself with the facts and to obtain counterproofs if found available or important. Since the withdrawal of this claim from the Mixed Commission of 1869 there can be no just allegation of laches properly chargeable to either the claimant or the claimant Government. The delay has been either in the inability or the unwillingness of Venezuela to respond to this claim. The occasion of this unwillingness and the reasons why it was placed on the list of "unrecognized" claims are properly matters for proof and consideration before this Commission, but it would be evident injustice to refuse the claimant a hearing when the delay was apparently occasioned by the respondent Government.

The umpire holds, therefore, that the case is properly before this Mixed Commission to be considered on its merits, and it is returned to the Commission for that purpose.

TOPAZE CASE.

Award of £20 each for officers and £10 each for seamen for one day's imprisonment held not excessive.

PLUMLEY, *Umpire:*

The *Topaze*, a British steamship, was at Puerto Cabello on the 9th of December, 1902, shortly after the establishment of the British Pacific blockade. At 8 p. m. the captain and crew were taken from the ship by an armed guard to the custom-house without opportunity to put on reasonable clothing or to lock up their berths, and at 10 p. m. they were taken under armed guard and imprisoned in a small and badly ventilated cell, and were compelled to sleep on the stone floor. There were 10 officers and a crew of 20. They were thus confined until 10.30 at night of the next day, and, owing to the bad smells and want of ventilation, many of the crew were ill. No food was provided, and what they had was sent in by friends. They were taken back to their ship under an armed guard, and while absent various articles belonging to the crew were stolen. These facts are taken from the memorial in this cause, and there are no contradictory facts alleged by Venezuela.

Upon these uncontested facts the umpire was requested by the honorable Commissioner for Venezuela to express his unofficial opinion upon the question whether a demand by the British Government for £20 each on behalf of officers of the ship and for £10 each for the crew in the case as made is an excessive amount.

While it did not seem to the umpire at the time of the inquiry that it was in excess of the ordinary demand in such cases, he thought it important and wise that his answer should be given after reflection and upon some basis of action resting upon similar cases before commissions and the accompanying decisions. Following out that thought,

he has made some investigation, and now brings forward the result for the use of the honorable Commissioner for Venezuela.

The umpire has had recourse to Moore on International Arbitrations, and the cases to be given are taken from the different volumes of that work.

(1) H. R. Smith (p. 3310): This was an arrest during the American civil war for treason. He was held fourteen weeks, or ninety-eight days, and before the British-American Commission was unanimously allowed $1,540, which is an average of a little less that $16 a day.

(2) Williams (p. 3119): Mexican Commission. Imprisoned twenty-five days. Allowed $600, or $24 a day.

(3) In the case of Parr (p. 3302), before the British-American Commission, it was held that his original arrest and a reasonable detention were lawful, but a detention of four months was not justified. He was unanimously given $4,800, or $40 a day.

(4) Ashton (p. 3288): Arrested and detained ninety-three days. Discharged without trial. Allowed by the same Commission $6,000, an average of about $65 a day.

(5) Julius Le More (p. 3311): Arrested by General Butler, while in command at New Orleans, on charge of aiding the enemy. Held forty-three days in custom-house. No claim of bad treatment. Was allowed by the commission $4,000, or a little over $93 a day.

(6) Crowther (p. 3304): Arrested in Baltimore. Brought before the provost marshal on charge of using seditious language during the civil war. Was held by the provost-marshal eight hours in a hotel. He claimed before the commission to have been talked to in an insulting manner personally and concerning his Government by the provost-marshal. Allowed $100.

(7) Montejo (p. 3277): Arrested and detained thirty-nine days. Allowed $3,900, or $100 a day.

(8) Rozas (p. 3124): Arrested and detained one hundred and forty days. Allowed by commission $14,000, or $100 a day.

(9) Powers (p. 3274): Arrested and detained forty days. Allowed by commission $4,000, or $100 a day.

(10) Edwards (p. 3268): Arrested. Detained forty-six days and discharged without hearing. Allowed $5,000, or almost $109 a day.

(11) McKeown (p. 3311): Arrested by commanding officer for disloyal and seditious language. Held thirteen days. Alleged improper treatment by commanding officer while in detention. Was discharged without a hearing, and was unanimously allowed by the British-American Commission $1,467, or about $113 a day.

(12) Cauty (p. 3309): Arrested for violating neutrality laws. Charge not sustained, and he was not tried. Held seventy days with no allegation of bad treatment. Allowed $15,700, or about $224 a day.

(13) Le More (p. 3311): Arrested by General Butler, while in command at New Orleans, on the charge of aiding the enemy. For eleven days he was in prison and obliged to wear a 32-pound cannon ball and 6 pounds of chain; and for thirty-two days following he was detained in the custon-house, making in all forty-three days. Was allowed by commission $10,000, or $232.50 a day.

(14) Montgomery (p. 3272): Arrested. Detained four days. Allowed $1,000, or $250 a day.

(15) Patrick (p. 3287): Arrested on false information. Held thirteen days. Allowed by commission $5,160, or about $397 a day.

(16) Monroe (p. 3300): Detained two days on board steamer and twelve hours in military prison. While he was in the prison his trunk on board ship was broken open, and money, wearing apparel, and other articles were stolen from it. Unanimously allowed by commission $1,540 for two and one-half days, or $616 a day.

(17) Sartori (p. 3120): Detained in fact four months, but it was held by the umpire that all but two days of that time was under circumstances permitting a detention. For the two days of unjustifiable detention the umpire allowed $5,000, or $2,500 a day.

(18) Forwood (p. 3307): Arrested in New York upon suspicions that he was aiding the enemy in the American civil war, and without any justifiable fact he was held in the office of the chief of police of New York city four hours. He was allowed by the British-American Commission $25,000.

We have here eighteen cases,[a] in every one of which there was a claim more or less well founded that the person arrested was guilty of

[a] For additional like cases see note to Giacopini case, p. 765.

an offense justifying the arrest, and in each case it turned out that the cause was not sufficient in proof to require a hearing. The persons thus arrested were men of more or less substance and character, but none, exclusive of those receiving the two high sums awarded, occupied any particular official rank or position, and the awards in each case meant substantially the measure in the given case of the value set on individual liberty and the indignity to that personal liberty by an unauthorized and unlawful arrest and detention. Excluding the two large sums as not being of particular value in this inquiry and taking the sixteen cases remaining, we find that the average sum allowed is a little over $161 a day. Out of the sixteen cases there are four for sums less than $100 a day. There are six at $100 a day, or approximately that sum, and there are five for more than $200. Judged by this analysis of the opinions of other arbitral tribunals, the sum of $100 seems to be the one most usually acceptable, while a sum less than $100 is quite in the minority.

The purpose of the umpire has been to obtain as nearly as might be the average judgment of arbitral commissions on matters of import similar to the one in question, and aside from that criterion the cases were taken substantially in the order in which they appeared in the work cited, and hence are worthy of reliance as expressing the common finding upon this question by several different commissions.

It will be noted that in the case in hand there was no claim that the parties arrested and detained had themselves committed any offense or done any wrong against the Government of Venezuela, which is a proper feature to consider in estimating the indignity of arrest and detention to the individual and the complaining government.

The umpire believes, therefore, that he can properly advise, unofficially, the honorable Commissioner for Venezuela that a sum not exceeding $100 a day is not an excessive demand, but approaches the minimum sum rather than the maximum allowed in cases for illegal arrest and detention, and is apparently the favored allowance by arbitrators.

OPINIONS ON MERITS.

COMPAGNIE GÉNÉRALE DES ASPHALTES DE FRANCE CASE.

A Venezuelan consul resident abroad has no right to demand of the captain of a vessel that he procure passports as a condition precedent to the clearing of his ship, and no Venezuelan law on this subject can possibly affect the case, which is governed by international law.

A Venezuelan consul who assumes to collect customs duties at Trinidad on goods to be entered at Venezuelan ports commits an act of Venezuelan sovereignty on British soil, which is an offense to the latter Government.

The refusal of the Venezuelan consul to clear a vessel for Venezuela, on the ground that because of complaints made of him to the colonial authorities at Trinidad his Government had refused him permission to make such clearances, is unlawful, because it is an act which not even a sovereign could perform for such a cause.

Ports in the hands of revolutionists can not be closed by governmental order or decree.[a]

Blockade of such ports can only be declared to the extent that the government declaring it has the naval power to make it effective.[a]

Governments are alike responsible for the acts of their agents, whether such acts be directed or only ratified by silence or acquiescence.

Expenses of translations in preparation of claim allowed.

---

[a] See De Caro case, p. 810, and Martini case, p. 819.

PLUMLEY, *Umpire:*

The commissioners failing to agree on this claim it came to the umpire for his consideration and decision thereon.

The claimant is an English company, incorporated under the companies acts, having its office at 19 Coleman street, London, E. C., and owning a mining concession which it purchased at Guanipa, in the State of Sucre, Venezuela, upon which it commenced operations in March, 1902, the product being asphaltum or bitumen. In the prosecution of its work of mining it was obliged to depend solely for its laborers and food therefor upon importations from Trinidad, which laborers and food were sent to Guanipa from Port of Spain in sailing craft chartered by the company.

April 15, 1902, the company's attorney at Trinidad applied to the Venezuelan consul at Port of Spain to clear one of the company's sailing craft with a supply of food for the laborers at its mining concession, the goods to be shipped to Guanipa. This such consul refused to do unless he was then and there paid the full duties chargeable in Venezuela on such goods imported into that country, and also the sum of $20 for passports which had been on a previous occasion required by such consul to be issued to certain of the company's laborers. Under the compulsion of necessity, in order to prevent suffering among these laborers, and under a protest, the company's attorney paid to the consul the full amount of such duties, and also the required sum of $20 for the passports.

June 12, 1902, an agent of the company, a merchant of Port of Spain, asked such consul to clear the company's chartered vessel, the British cutter *Euterpe*, bound for Pedernales, in Venezuela. This the consul refused to do unless paid in advance the import duty payable in Venezuela and $20 for passports for persons then taking passage, as required in the previous instance. Again, under the compulsion of urgent necessity, the agent paid such consul said sum of $20 for passports and the full sum of said import duties, paying the duties on the ship's stores only, as she was leaving in ballast.

June 30, 1902, said agent again applied to such consul for a similar clearance, and it was granted under and upon the same conditions (except as to passports) as last previously mentioned and upon the payment of the full import duty payable in Venezuela.

On and after the 10th day of July, 1902, such consul refused to clear any vessel at all on behalf of this company, stating as his reason therefor that the company had made complaint to the colonial authorities at Trinidad of his previous action, as above stated, and that the permit enabling him to clear vessels for the mining companies had been withdrawn.

As a result of this refusal the company was unable to make use of its schooner *Euterpe*, lost three months of the charter, and was forced to maintain the crew while the ship was idle. It was also prevented from sending food and supplies to the mines, and the employees at that place, being on the verge of starvation, were compelled to leave their employment and go to Trinidad in open boats, and all mining operations of this company ceased.

It appears in the case that throughout the period from July 10 and afterwards other vessels were cleared by such consul for other mining companies in Venezuela.

The total claim, including cost of preparing the same, is £240 18s. 5d.

It also appears in the case that the ports of Pedernales and Guiria were during a part of the time covered by this complaint, if not during all of such time, in the hands of the revolutionists, and the country around about was also in their hands; and the fact that the port of Pedernales was understood by the consul to be in the hands of revolutionists at the time he was applied to, just previous to the 15th of April, 1902, to clear the boat, was given by him as a reason why he was unable to dispatch the boat, since that was a port where this particular boat would call to pay the customs duties; but he, on being assured that the revolutionists had left Pedernales for Maturín on the 4th of that month, promised to dispatch the boat whenever the agent of the company was ready; but it was following this statement by the consul that the necessary papers were presented to him by the company's agent, and he declined to grant the clearance unless the sum of $20 for passports, issued on a previous occasion, was then paid him, and it was immediately following the payment of the $20 that the consul then declined to issue the clearance unless the full customs duties, which should be collected at a Venezuelan port, were paid to him in Trinidad in advance. Offers were then made by the agent of the claimant company several times, on the 14th and 15th of that month, to leave the amount on deposit with the consul, with the understanding that if the revolutionists collected anything on account of duties such payment was to be deducted from the amount so placed on deposit; but to this the consul would not consent.

It also appears, from the examination of the blue book, whenever a cargo was taken it had to go to the port of Guiria, as the boat could only enter the port of Pedernales when in ballast; that the proposition to go to Pedernales was on the occasion when the company's boat went in ballast, and because Guiria was at the time in the hands of the revolutionists. For the latter reason the consul refused to make out a clearance for Guiria, and the suggestion of Pedernales was made by the claimant's agent because of such refusal; and the reason the consul gave for demanding the duties at Trinidad was that he was afraid their boat might come across revolutionists, who would collect them. It also appears that the consul on one of these occasions required the agent of the claimant company to make out his papers in blank with permission to the consul to fill in the destination, and that the consul filled in the name of Guanipa, which was, in fact, a virgin forest, having no settlement excepting that of the claimant company, and having no Venezuelan representative there, and although the consul wrote in the papers the name of the commandant of Guanipa, there was no such person there and no government official of any kind.

It also appears, as early as April 23, 1902, that the colonial secretary, by order of the British governor at Trinidad, advised the consul that in demanding customs duties payable on the cargo of such vessels to the Government of Venezuela he had exceeded his powers and had assumed the right to commit an act of Venezuelan sovereignty on British territory.

It further appears that, in connection with refusing the dispatch unless the import duties were payable in advance, it was threatened that unless so paid the vessels would be destroyed as soon as they reached Venezuelan waters by the Venezuelan ship of war then in the harbor of Trinidad. It is also understood to be historic that on June 28, 1902, navigation of the Orinoco was prohibited by presidential

decree, and in the same decree the extent of its coast line which embraced its mouth was declared blockaded, and the ports of Guiria, Caño Colorado, and La Vela de Coro were declared closed to navigation.

The honorable commissioner for Venezuela denies pecuniary losses to the company, since the duties were not in fact collected in Venezuela; insists that the refusal of clearance for Guanipa and the demand for passports were lawful, and that in nothing has the company suffered losses or made payment whereby it has a rightful claim against the Government.

The learned agent for the claimant Government does not press the repayment of the sum of $20 for passports paid April 15, 1902, and hence this part of the claim is not entertained by the umpire.

The question of passports as presented is not that the captain of the *Euterpe* asked for them or for their extension on June 12, in which case there would be no question that the consul should receive a proper fee therefor, but the claim is that the consul made the issuing of passports for that occasion and the payment of his fees therefor one of the conditions precedent to his clearance of the boat, and that this requirement it was unlawful for him to make; that such demand was in violation of international agreement and the general laws and principles of commerce, and hence was in fact an illegal extortion of money for which a right of recovery exists.

Concerning passports the umpire understands the law to be that the Venezuelan consul resident at Trinidad has not the authority to issue them to a British subject, and can only countersign them *if requested* so to do; that it was wholly in the right of the captain of the *Euterpe* to sail for any port in Venezuela without having the passports of his passengers countersigned by the Venezuelan consul at Trinidad; that the matter of passports had nothing to do with the clearance of the *Euterpe*, and that it was error for the Venezuelan consul to insist upon their being a condition precedent to such clearance. No law of Venezuela, were there such, could change this right, which does not come from national but from international law. A Venezuelan law, as the umpire understands it, is limited in its application to Venezuelans. This holding as to passports seems to be in conformity with the Venezuelan law published in the Official Gazette at Caracas Monday, June 19, 1899.

To assume to collect in Trinidad import duties on goods to be entered at Venezuelan ports was an act of Venezuelan sovereignty on British soil. It was wholly without right and directly against the right of sovereignty which inhered in the British Government only. It could not be countenanced or permitted by and was a just cause of offense to that Government.

To take the other step and make the payment of these duties on British soil a condition precedent to the clearance by the Venezuelan consul of a British ship bound for a Venezuelan port was a most serious error on the part of such consul.

As between nations, the proprietary character of the possession enjoyed by a State is logically a necessary consequence of the undisputed facts that a State community has a right to the exclusive use and disposal of its territory as against other States, and that in international law the State is the only recognized legal person. (Hall's International Law, p. 48.)

Consular jurisdiction depends on the general law of nations, existing treaties between the two Governments affected by it, and upon the obligatory force and activity of the rule of reciprocity. * * * (Wharton, vol. 1, sec. 124, p. 797.)

A consul of the United States in a foreign port has no power to retain the papers of vessels which he may suspect are destined for the slave trade. (Wharton, vol. 1, sec. 124, p. 796, citing 9 Op. Attys. Gen., p. 426.)

The act of the Haitian legislature referred to can not be regarded as in conformity with that stipulation. It authorizes the consuls of that Republic to charge exorbitant fees on exportations from the United States; among others, 1 per cent on the value of cargo of the vessel. This, besides being illiberal in its character, is tantamount to an export duty, acquiescence in which by this Government would be a concession to that of Haiti of an authority in ports of the United States which has not been conferred on this Government by the Constitution. (Wharton, vol. 1, sec. 37, p. 143.)

In that reply the Haitian minister was informed, with respect to that portion of his note which related to the authentication by the consular officers of Haiti in this country of the invoices of the cargoes of vessels bound to the ports of that country, that the charge of 1 per cent on values for that proceeding is, after the most deliberate consideration, believed to be unduly exorbitant and tantamount to an export tax, which it does not comport with the dignity of this Government to allow to be exacted by any foreign authority within the jurisdiction of the United States.

* * * * * * *

The Government of the United States being by its Constitution expressly prohibited from levying an export tax, it can not allow any foreign power to exercise here in substance or in form a right of sovereignty denied to itself.

No denial was made of the right of the Haitian Government at its discretion, so far as this may not have been limited by treaty, to impose duties on the cargoes of vessels from this country arriving in Haitian ports, but it was complained most positively that the present grievance of a consular fee of this character exacted in our ports is in its form derogatory to the sovereignty of the United States and that this character was not removed from it by the Haitian citation of the axioms of political economy that all duties are ultimately paid by the consumer. (Wharton, vol. 1, sec. 37, p. 144.)

[The charge of] 40 cents a head on cattle exported from Key West to Cuba is held by the Government of the United States to be a restriction on commerce of the United States and a burden onerous on American citizens engaged in American commerce, and must have the effect of excluding them finally from the Spanish colonial markets. It is a charge, moreover, upon whatever ground it may be placed, that is in itself anomalous. (Summary from Wharton, vol. 1, sec. 37, pp. 147–148.)

Our complaint is that as our commercial intercourse with Spain is mainly with her possessions in this hemisphere, exorbitant consular charges on United States vessels and their cargoes bound to such ports are virtually an export tax, which assuredly no foreign government can be allowed to exact in our ports, especially as such a power has not been granted to this Government. (Summary from Wharton, vol. 1, sec. 37, p. 156.)

There is but one way in which the proposal to collect 10 cents per ton of cargo from the vessels of the United States in Spanish ports could be regarded as defensible under international law, and that is by abandoning altogether the sophistical contention that it is a consular fee and collecting it as a distinct import tax *levied in Spanish ports* in addition to customs and other import dues prescribed by existing law. If *so levied* and collected on all foreign cargoes *brought within Spanish jurisdiction* without distinction of flag, this Government could not controvert the perfect right of Spain to adopt such a measure, but it could not look with equanimity on any partial measure the practical result of which would be the imposition of a discriminating duty of 10 cents per ton against the cargoes of vessels going from the United States to ports of Spain. (Wharton, vol. 1, sec. 37, p. 156.)

It does not appear to this Government a sufficient or just reparation for a wrongful act admittedly perpetrated by the Spanish officers of the consulate at Key West since 1876 to give orders that hereafter the wrongful tax shall not be collected. The case is conceived to be one where no less a reparation than the return of the illegally collected excess could satisfy either the right pertaining to the United States or the high sense of justice of Spain. It will doubtless be enough for you to call the attention of the minister of state to this point to insure the cheerful correction of the oversight and a prompt offer to refund the overcharge in question. (Wharton, vol. 1, sec. 37, p. 158, quoting Mr. John Davis, Sec. of State, June 23, 1883, to Mr. Foster.)

It is not material to the determination of the two preceding questions to discuss here other points which might be regarded as involved. So far as they have juridical value they will be treated inferentially at least in disposing of the questions next to be considered.

It was not in accordance with commercial usage, international law, or treaty agreement between the British Government and the Venezuelan Government that the Venezuelan consul should refuse clearance to the British ship *Euterpe* for Venezuelan ports because the asphalt company had complained to the colonial authorities of his previous acts. It is true he claimed that because of such complaints his Government had refused him permission to make such clearances. This, if true, would not aid the refusal, because it is an act which even a sovereign power could not rightfully perform for such a cause. But the umpire acquits Venezuela of any such charge. The consul must have misinterpreted his instructions in that regard. To destroy the established and important business of several companies established under the concessions and with the direct approval of the Government, to imperil the lives of a large number of laborers for such a frivolous reason might seem possible to the consul, but it is without the comprehension of the umpire, and he is confident no such order based upon such a reason ever issued from the hands of the Venezuelan Government.

You will state that this Government does not question the right of every nation to prescribe the conditions on which the vessels of other nations may be admitted into her ports; that, nevertheless, those conditions ought not to conflict with the received usages which regulate the commercial intercourse between civilized nations; that those usages are well known and long established, and no nation can disregard them without giving just cause of complaint to all other nations whose interests would be affected by their violation; that the circumstance of an officer of a vessel having published in his own country matters offensive to a foreign government does not, according to those usages, furnish a sufficient cause for excluding such vessel from the ports of the latter * * *. (Wharton, vol. 1, sec. 37, p. 140, quoting Mr. Conrad, Acting Sec. of State, to Mr. Barringer, Oct. 28, 1852.)

An arbitrary refusal of the Spanish consul at New York to authenticate the signature of the Secretary of State, "an act appropriately belonging to the consular functions," on the ground that "he or his Government had conceived some displeasure toward the persons who have executed some of the papers accompanying the signature of the Secretary," is in contravention of international law and practice. (Wharton, vol. 1, sec. 123, p. 792, quoting Mr. Marcy, Sec. of State, to Mr. Magallon, Jan. 19, 1854.)

There shall be between all the territories of His Britannic Majesty in Europe and the territories of Colombia a reciprocal freedom of commerce. The subjects and citizens of the two countries, respectively, shall have liberty freely and securely to come with their ships and cargoes to all such places, ports, and rivers, in the territories aforesaid, to which other foreigners are or may be permitted to come, to enter into the same, and to remain and reside in any part of the said territories, respectively; also to hire and occupy house and warehouse for the purposes of their commerce, and, generally, the merchants and traders of each nation, respectively, shall enjoy the most complete protection and security for their commerce; subject always to the laws and statutes of the two countries, respectively. (Treaty of Apr. 18, 1825, between the Government of Great Britain and State of Colombia, ratified and confirmed by the Government of Venezuela, Oct. 29, 1834, Art. II.)

Indeed, the honorable Commissioner for Venezuela carefully avoids making any allusion to this statement of the consul and his opinion upon the other branch of the consul's contention, namely, that his action was founded on the fact that the port of Guiria was occupied by the rebels, stating that the consul "is forbidden to communicate with authorities imposed by the revolution." Such being the case, the consul must obey. It is also true that on June 28 the National Executive had declared all of these ports closed.

However important it was to Venezuela in its fight for the integrity of its Government to close these ports, it is historic that it was unable physically to establish an effective blockade of any of the ports in question. To close ports which are in the hands of revolutionists by

governmental decree or order is impossible under international law. It may in a proper way and under proper circumstances and conditions in time of peace declare what of its ports shall be open and what of them shall be closed. But when these ports or any of them are in the hands of foreign belligerents or of insurgents, it has no power to close or to open them, for the palpable reason that it is no longer in control of them. It has then the right of blockade alone, which can only be declared to the extent that it has the naval power to make it effective in fact.[a]

There is, however, one form of closure which states are not free to adopt. In case they are attempting to put down a domestic revolt, they can not shut up ports in possession of the insurgents by merely declaring them no longer open to trade. Great Britain maintained this position successfully in 1861 against both New Granada and the United States. The Government of each of these countries claimed a right to close, by municipal regulation and not by blockade, certain ports held by revolted citizens. The discussion which followed made it quite clear that such a claim can not be sustained. A state is free to exclude both foreign and domestic vessels from any harbor over which it actually exercises the powers of sovereignty. But when its authority is at an end, owing to insurrection or belligerent occupation by a hostile force, it must fall back upon warlike measures; and the only warlike measure which will lawfully close a port against neutral commerce is an effective blockade. (Lawrence, p. 584. Also cites Wharton, International Law Digest, secs. 359, 361; Glass, Marine International Law, pp. 105–107. Also see Hall, p. 727, where there is a note treating at length on this subject.)

It is noticed that the Venezuelan minister for foreign affairs lays much stress upon the fact that the consul of that Government at Trinidad warned some of the steamers not to repair to ports which were in possession of the insurgents, and claims that by going thither, despite the warning, they violated the law, and, therefore, that the Venezuelan Government is exonerated from accountability. Such an act, if it have any force, is obviously tantamount to blockade by proclamation only, an expedient which it might have been hoped was long since as obsolete as it is contrary to the law of nations. (U. S.-Vene. Claims Com., Convention of 1892, p. 454, J. C. B. Davis, Acting Sec. of State.)

The consul's warning and his threat of confiscation were alike unlawful. The danger of giving such warnings, if they are acted upon by the parties warned, is illustrated in the award that was rendered unanimously by the British-American Commission against the United States (United States Commissioner Fraser delivering the opinion) on account of a warning given by an officer of the United States Navy (Edward C. Potter) to a British vessel not to enter the port of Savannah after he had prevented her from entering the port of Charleston, when in fact no effective blockade was then established against Savannah. (See Vol. VI, Papers relating to the Treaty of Washington, pp. 153, 252–254. U. S.-Vene. Claims Com., Convention of 1892, pp. 488–489.)

The United States adheres to the following principles:

* * * * * * *

Third. Blockades, in order to be binding, must be effective. (Mr. Seward, Sec. of State, to Mr. Jones, Aug. 12, 1861; Wharton, vol. 3, sec. 342, p. 280.)

The mandate of the Mexican Government was obviously tantamount to a blockade by notification merely, the illegality of which has invariably been asserted by the United States, and has been agreed to by Mexico in the treaty. (Wharton, vol. 3, sec. 361, p. 372. Mr. Forsyth, Sec. of State, to Mr. Monasterio, May 18, 1837, MSS., Mex.)

(England took the same position toward Brazil in 1827. Wharton, vol. 3, sec. 361, p. 372.)

It may be admitted that neither France nor the United States has acknowledged the legality of the blockade of an extensive coast by proclamation only, and without force to carry the same into effect. (Wharton, vol. 3, sec. 361, p. 372. Mr. Webster, Sec. of State, to Mr. Sartiges, June 3, 1852, MSS., France.)

Thus it has ever been maintained by the United States that a proclamation or ideal blockade of an extensive coast, not supported by the actual presence of a naval power competent to enforce its simultaneous, constant, and effective operation on every point of such coast, is illegal throughout its whole extent, even for the ports which may be in actual blockade; otherwise every capture under a notified blockade would be legal, because the capture itself would be proof of the blockading force.

[a] See De Caro case, p. 810, and Martini Company case, infra, p. 819.

This is, in general terms, one of the fundamental rules of the law of blockade as professed and practiced by the Government of the United States.

And if this principle is to derive strength from the enormity of consequences resulting from a contrary practice, it could not be better sustained than by the terms of the original declaration of the existing Brazilian blockade, combined with its subsequent practical application. (Wharton, vol. 3, sec. 359, p. 353. Mr. Forbes, minister of the United States to Buenos Ayres, to Admiral Lobo, commanding the Brazilian squadron blockading Buenos Ayres, February 13, 1826. Brit. and For. St. Pap.)

Lord John Russell said, "The question is one of considerable importance. The Government of New Granada has announced, not a blockade, but that certain ports of New Granada are to be closed. The opinion of Her Majesty's Government, after taking legal advice, is that it is perfectly competent for the government of a country in a state of tranquillity to say which ports shall be open to trade and which shall be closed; but in the event of insurrection or civil war in that country it is not competent for its government to close the ports that are de facto in the hands of the insurgents, as that would be an invasion of international law with regard to blockade." (Wharton, vol. 3, sec. 359, p. 355.)

This Government, following the received tenets of international law, does not admit that a decree of a sovereign government closing certain national ports in the possession of foreign enemies or of insurgents has any international effect unless sustained by a blockading force sufficient to practically close such ports.

Mr. Lawrence thus states the rule drawn from the positions taken by the administrations of Presidents Jefferson and Madison during the struggles with France and England which grew out of the attempt to claim the right of closure as equivalent to blockade without effective action to that end: "Nor does the law of blockade differ in civil war from what it is in foreign war. Trade between foreigners and a port in possession of one of the parties to the contest can not be prevented by a municipal interdict of the other. For this, on principle, the most obvious reason exists. The waters adjacent to the coast of a country are deemed within its jurisdictional limits only because they can be commanded from the shore. It thence follows that whenever the dominion over the land is lost by its passing under the control of another power, whether in foreign war or civil war, the sovereignty over the waters capable of being controlled from the land likewise ceases." (Wharton, vol. 3, sec. 361, p. 376. Lawrence's note on Wheaton, Pt. III, ch. iii, sec. 28, 2d annotated ed., 846.)

Professor Perels, judge of the imperial admiralty court in Berlin, in a treatise on international maritime law, published in 1882, holds that there can be "without blockade no closure of a port not in possession of the sovereign issuing the decree." (Wharton, vol. 3, sec. 361, p. 378.)

Mention is made in the memorial that throughout the same period in which the consul was refusing to clear the vessels of the claimant company he was clearing the vessels of other mining companies, subjects or citizens of certain other countries who had concessions or mining interests in Venezuela accessible through the same ports. This might be an important factor, but as the claim is determined on other grounds, it does not become necessary or wise to consider it or to pass upon it.

The umpire holds that the contentions of the claimant government concerning compulsory payment for passports and of duties and damages for detention of the *Euterpe* are well founded, and that the question of responsibility of Venezuela for the acts of their consul at Trinidad is found in the failure of the Government of Venezuela, after knowledge thereof, to make seasonable disclaimer of his acts and seasonable correction of his mistakes. If the respondent Government authorized or directed some of these acts, or only ratified them by silence and acquiescence, its responsibility is the same. In determining the issues raised in this case, especially those following June 28, 1902, the umpire is not passing, in any part, upon the propriety or wisdom of the governmental policy of Venezuela in that regard. He can readily assume that it seemed to those in power that the exigencies of the situation required drastic measures for the preservation of the national life. In such case, however, it must have been appreciated that loss would ensue and that reparation therefor must follow.

A State is responsible for, and is bound by, all acts done by its agents within the limits of their constitutional capacity or of the functions or powers intrusted to them. When the acts done are in excess of the powers of the person doing them the State is not bound or responsible; but if they have been injurious to another State it is, of course, obliged to undo them and nullify their effects as far as possible, and, where the case is such that punishment is deserved, to punish the offending agent. It is, of course, open to a State to ratify contracts made in excess of the powers of its agents, and it is also open to it to assume responsibility for other acts done in excess of those powers. In the latter case the responsibility does not commence from the time of the ratification, but dates back to the act itself. (Hall's International Law, 4th ed., sec. 106, p. 338.)

In case of Saml. G. Adams *v.* Mexico, brig *Geo. B. Prescott.* Here the brig arrived at Tampico, Mexico, shortly after the garrison had declared for the reactionary revolution of Zuloaga, and subsequently General García of the constitutional government besieged and blockaded the place, and as the brig was leaving the port after having paid all port dues he claimed her, demanding that the dues, amounting to $38, should be paid to him. In consequence of the refusal of the master to comply with his demand the brig was detained for a number of days. Claim was made before the Commission for the detention, and it was allowed. (Moore's Int. Arb., 3065.)

In case of the *Galaxy*, before the United States-Mexican Commission, convention of 1839. The vessel entered the river Tabasco, in Mexico, intending to proceed up the stream to the city of that name. In consequence of "political disturbances" she was not permitted to do so. The captain and his ship were kept at the mouth of the river from January 1, 1830, till the 5th of February following, by order of the military commandant of the city of Tabasco, "in consequence of political dissension in which the said commandant was engaged with the commandant of the principal bar." The umpire and commissioners joined in allowing for the detention of the vessel and for the detention of the captain. (Moore, 3265.)

In case of the *Only Son.* Mr. Bates, umpire of the mixed commission under the convention between the United States and Great Britain of 1853, awarded $1,000 to the owners of the schooner *Only Son* for the wrongful action of the collector of customs at Halifax, Nova Scotia, in compelling the master of the schooner, whose intention was merely to report for a market and proceed elsewhere if circumstances rendered it advisable, to enter his vessel and pay duty on his cargo. The amount allowed was about the amount of the duties paid. In the diplomatic correspondence which preceded the British Government acknowledged its liability to pay any loss sustained by reason of the act of the collector, but claimed that no loss was suffered. (Moore, 3404–3405.)

In the case of the *William Lee*, whaling ship, detained three months by the captain of the port, who refused to give him a clearance. During its detention ship was damaged so that $4,000 was required to repair, and the whaling season was over. The Government of Peru admitted their liability for the sum required to repair the ship, and there was added to this by the umpire $1,500 for expenses during detention, and interest at the rate of 6 per cent per annum and a certain amount for demurrage, so that all amounted to $22,000. (Moore, 3405–3406.)

In the case of the *Labuan*, American and British Claims Commission, treaty of May 8, 1871. On the 5th of November, 1862, ship was in New York laden with merchandise destined for Matamoras. On that day her master presented the manifest to the proper officer of the custom-house at New York for clearance, but such clearance was refused, and refusal continued up to the 13th of December, 1862, on which date it was granted. The memorial claimed that the ship was detained by reason of instructions received by the custom-house officers from the proper authorities of the United States to detain the *Labuan* in common with other vessels of great speed destined for ports in the Gulf of Mexico, to prevent the transmission of information relative to the departure or proposed departure of a military expedition fitted out by the authority of the United States. Damages were claimed in the nature of demurrage at the rate of $1,000 per day, thirty-eight days. The Government of the United States claimed a right through necessary self-protection to detain the ship. The counsel for the claimant maintained that the detention of the *Labuan* was, in effect, a deprivation of the owners of the use of their property for the time of the detention for the public benefit; that it was, in effect, a taking of private property for public use, always justified by the necessity of the State, but likewise always involving the obligation of compensation. He cited 3d Phillimore, 42, and Dana's Wheaton, 152, n.

The Commission unanimously made an award in favor of the claimant for $37,392. (Moore, 3791.)

In the case of the brig *Ophir.* In the mixed commission between the United States and Mexico, under the convention of April 11, 1839. This vessel was detained at

Vera Cruz in consequence of an inhibition issued by the local authorities of the territory of the departure of a vessel from the port. This inhibition was based upon the existence of local political disturbance. The umpire awarded $400, with interest, for its detention. (Moore, 3045.)

See also Moore, 3119–3120, 3624–3625, 4612–4617; Maxims of Heffter, adopted and found in Woolsey's International Law, 85–86.

It does not appear to this Government a sufficient or just reparation for a wrongful act, admittedly perpetrated by the Spanish officers of the consulate at Key West since 1876, to give orders that hereafter the wrongful tax shall not be collected. The case is conceived to be one where no less a reparation than the return of the illegally collected excess could satisfy either the right pertaining to the United States or the high sense of justice of Spain. (Wharton, vol. 1, sec. 37, p. 158.)

The umpire is not disregardful of the claim of the honorable Commissioner for Venezuela that, since the duties were not, in fact, again paid, the claimant company has suffered no loss, and hence, in equity, has no rightful demand for their repayment; but it is the opinion of the umpire that an unjustifiable act is not made just because, perchance, there were not evil results which might well have followed. The claimant Government has a right to insist that its sovereignty over its own soil shall be respected and that its subject shall be restored to his original right before consequent results shall be discussed. The umpire having found that the requirement of import duties before clearance was an unlawful exaction and a wrongful assumption of Venezuelan sovereignty on British soil, it is just and right, and therefore justice and equity, that these duties be restored to the claimant company.

The honorable Commissioner for Venezuela having objected to an allowance for expenses attending the preparation of this claim the umpire allows only so much thereof as was incurred in making translations for the use of this Commission, which sum he deems just and equitable.

The umpire expresses his hearty appreciation of the able and thorough manner in which this case has been presented to him both orally and in writing by the members of this Commission who have performed that duty for their respective Governments.

The umpire allows interest at the rate of 3 per cent per annum for one year, and holds the respondent Government liable to the claimant Government in the sum of £214, for which amount the award may be prepared.

KELLY CASE.

Participation in a revolutionary movement so as to deprive the claimant of the right of intervention by his government, must be proved beyond all reasonable doubt in order that it may be pleaded as a valid defense to a claim for the value of neutral property destroyed by government troops.

PLUMLEY, *Umpire.*

This is the case of James Nathan Kelly, a native of the island of Trinidad, a British subject, and who for some thirteen years prior to the 12th of March, 1901, had lived near Rio Grande, not far from Guiria, and was a shopkeeper and the owner of a cocoa plantation, and was also the owner of a cutter of about 3 tons. He complains that in January, 1900, some $100 worth of goods were taken by one Tomasito Guerra, at the head of a regiment, understood by the umpire

to have been Government troops, and that in January, 1901, the Venezuelan troops under Colonel Rueda, the chief in command being General Faia, came, and this time he was ruined; that he was arrested and taken before a court-martial. While he was gone his shop was broken into, his dwelling house entered, his furniture destroyed, his clothing and jewels taken, as were 40 bags of cocoa and $947; that, later, to protect his wife from outrage he sent her under cover of night over the hills and rivers from Río Grande to Guiria on foot, and that she paid her passage money of $18 and sailed from Guiria to Trinidad; that he himself was concealed in the woods for nearly a month, when he made his escape to Trinidad, where he still remained at the time of giving his affidavit, December 23, 1902. He claims his losses to consist of—

Cash ($150 and $947)	$1,097
Cocoa, 40 bags, at 41 per bag (200 pounds)	768
Shop goods	150
Furniture	250

The claimant himself and his wife make their several affidavits. He also introduces the affidavit of one Julio Cortes. By this witness it is stated that the shop was fairly stocked; that Kelly was arrested; that they took away a good deal of cocoa belonging to Mr. Kelly, and that Mr. Kelly had a very fine cocoa estate, which yielded very well. There is no statement by this witness as to the amount, condition, character, or value of the furniture in the house, or that Kelly lost any furniture, and there is no statement by either Mr. Kelly or his wife as to the amount, condition, or character of his furniture or any description of the contents of his shop or what kind of business he was doing as a shopkeeper.

Inspection of the testimony of Mr. and Mrs. Kelly shows serious contradiction on an important matter. He says that at the time of this raid by Colonel Rueda he had 12 bags of dried cocoa in his house, and that this was taken by these troops. He also states that he had 28 bags of dried cocoa in his house, which he was about shipping, which were also *taken by them*. Mrs. Kelly says that at the time of this raid they had 12 bags of cocoa, which were partly under the bed, and which were taken away, and that *on a former occasion* 28 bags, which her husband was about shipping, and which were *then on the beach*, were taken; that these 28 bags were not in the house at this time, but had been placed upon the beach for shipment, and while on the beach were taken—by whom or when she does not say. Her statement is too vague to be of probative value taken alone, but it is absolutely contradictory to that of Mr. Kelly, and if she is to be believed he can not be on that point.

By witnesses on the part of the respondent Government, some of whom treat the case apparently very fairly, it is learned by combining their testimony that the furniture in the house consisted of seven chairs, two cedar tables, two benches, one old bed and mattress on two benches; and it seems to the umpire that their estimate of value at 200 bolivars, or $40, is a very liberal estimate. It conforms altogether better with the umpire's judgment as to the probabilities of value than the claim of Mr. Kelly in that regard.

The umpire also thinks that the value placed on the stock of goods in the shop by some of these apparently open-minded witnesses called by the respondent Government is much nearer the actual facts than

the claim of Mr. Kelly, and that a valuation of $60 is very liberal. But as the umpire understands the claim of $150 to cover both the instance of 1900 and of 1901 he is inclined to allow it without reduction.

Since it was the duty of Mr. Kelly to give such a detailed statement of the conditions underlying the claims made as to put the triers of his case into as close a relation to the facts as can be done reasonably, he has entirely failed in this regard both as to his furniture, which he claims was taken or destroyed, and as to the goods which comprised the store of which he claims to have been deprived. It is important in a case of this kind to know whether the goods taken were such as might properly enter into the use of the Government of Venezuela, so that it could be said to be benefited in any way by the taking. From the general trend of the evidence for the defense—and it is there we are obliged to look for all the details and for all the supporting evidence in matters of detail, at least for Mr. Kelly—we find that he is accredited with a plantation substantially as he has alleged, but that he is not accredited with having on hand any large deposit of cocoa at any one time. This does appear, however, that Mr. Kelly was heard to demand of Colonel Rueda a return of 3 bags of cocoa, which he claimed were taken by the troops of this officer while under his command. It also appears there were 9 bags of cocoa, which were taken from his boat at the time he was prevented from making his trip to Trinidad by the advent of the Government steamer *Augusto*, and when returning to the beach he stored his cocoa, evidently awaiting an opportunity to take it to Trinidad when he would not be intercepted by the Venezuelan Government. So that Mr. Kelly is supported through different sources in his claim concerning cocoa to the extent of 12 bags in all, and 12 bags is all that his wife says were taken at this time, and as to the 28 bags there is no evidence excepting the thoroughly contradicted evidence of Mr. Kelly himself that these were ever taken by Government troops.

The evident exaggeration by Mr. Kelly as to his stock of foreign goods and the cocoa makes the umpire very uncertain as to the amount of money which he lost; but as he and his wife support one another substantially as to the $947, he stating the precise sum and she saying that it was nearly $1,000, and as there is nothing to antagonize that claim either in the claim itself as being improbable, or as being improbable that it should be kept in the house by people who are living remote from a large town or city, and who are well known to be jealous of banks, and as Mr. Kelly and his wife are evidently thrifty people, industrious and saving, so far as the umpire can gather from all the testimony, he is inclined to credit their statement and accept it for the sum of $947. He does not find proof satisfactory to him of any other sum of money to be added to this.

The question then arises whether the facts shown by the Venezuelan Government by their witnesses are sufficient to establish practically beyond a reasonable doubt that Mr. Kelly was a revolutionist; that he was so entangled in the political affairs of Venezuela that he had practically denationalized himself, and had rendered it impossible for the British Government to intervene in his behalf.

As this charge is a very grave one, involving acts which are treasonable if he were a citizen of Venezuela, justice and equity require that even in a civil matter the facts themselves and the deductions to be made therefrom should rest upon indubitable proof, and so strong

and forceful as to practically do away with all doubt concerning the charge made. Concerning this we have, first, the negative facts, which after all have an affirmative value, of the witnesses for the respondent Government from the vicinity of Mr. Kelly's home, none of whom assert any knowledge that Mr. Kelly had been a leader in revolution or a revolutionist at all. On the contrary they say that they know nothing of that kind, although one or two state that they had heard he was mixed up in political matters, but knew nothing to that effect. So much of the evidence for the respondent Government taken from his own vicinage counts in Mr. Kelly's favor quite decidedly. Then there is the testimony of the man who says that he saw Kelly as a revolutionary leader with one guerilla, and that Kelly apologized or explained his being in the revolutionary ranks by saying that he had been compelled to do this as he had been robbed by the Venezuelan Government.

The testimony tending to establish the fact of Mr. Kelly's relation with revolutionary matters is to show that he was assisting in the revolution of General Hernandez, and we have the authority of the honorable Commissioner for Venezuela that this revolution began on the 22d of October, 1899, and ended in June, 1900. This claim for damages is based on the wrongful acts of Government troops in January, 1901; and it appears that after these damages occurred Mr. Kelly hid in the woods for a month, and then took boat to Trinidad, where he remained and where he was at the time of giving his affidavit in this case, which was the 23d of December, 1902. So that it is absolutely impossible that the witness can be correct in this statement. He either has mistaken his man or he has mistaken the facts. In either case he becomes a doubtful witness, and his testimony is too badly shaken to place any reliance upon it in a matter so important. In the matter of the evidence tending to show that Mr. Kelly made some preparations in association with some of his neighbors to meet with force the anticipated raid from the war sloop *Augusto*, it is sufficient to say that it amounted to nothing. Nothing is shown to have been done, excepting that for a few days or nights they were banded together and took turns on sentry duty; but they made no attacks upon anyone, and, so far as it appears, were not attacked, and their fears were fortunately groundless and their labors happily fruitless. It does appear that there were well-grounded fears that the advent of Government troops, no less than revolutionary troops, meant pillage, plunder, devastation, destruction, and anticipated outrage of their women, instead of protection, peace, security in property and person, which is the relation that the troops of the Government should sustain, so far as possible, in the midst of revolution, and that under such conditions men arm and even shoot in defense of their property and their homes is to be commended, and the umpire finds nothing in this to criticise and nothing in it to extract a single grain of proof that Mr. Kelly was a revolutionist. Again, the witnesses who claim to connect Mr. Kelly with the army of the revolution attach him to General Ducharme and make him so intimately connected with this general as to be the bearer of his dispatches and his confidential personal oral orders, so that it is impossible not to conclude that if Mr. Kelly had been thus associated with him he would have known of the fact. Hence the importance of his testimony, which is that Mr. Kelly was never engaged in any of the political matters of his district

and has never been connected with him in any of his revolutionary efforts. The testimony of two other witnesses who claim to know assert positively that Mr. Kelly was not engaged in any way in the political matters of Venezuela.

Out of this conflicting testimony the umpire can certainly find no fact so settled and so certain as therefrom to establish that Mr. Kelly had been so far engaged in any political matters in Venezuela or so opposed to the Government of Venezuela as to deprive him of his rights as a neutral subject of Great Britain to the intervention of his Government for protection, when such intervention is otherwise permissible.

It is therefore the opinion of the umpire that the claim of Mr. Kelly should be allowed in the sum of £297, which amount is the sum allowed for damages to property and 3 per cent interest thereon from the 12th of March, 1901, the date when this claim was first presented to the Venezuelan Government, to October 20, 1903, the date of this award.

AROA MINES (LIMITED) CASE—SUPPLEMENTARY CLAIM.

(By the Umpire:)

Damages will not be allowed for injury to persons, or for injury to or wrongful seizure of property of resident aliens committed by the troops of unsuccessful rebels.[a]

Interpretation of the meaning of the words "claim," "injury," "seizure," "justice," and "equity," as used in the protocol.

CONTENTION OF BRITISH AGENT.

In supporting the claim of the Aroa mines for damages due to the action of revolutionaries, it is desirable that the position taken up by His Majesty's Government should be clearly stated and explained.

During the events which led to the signing of the protocol of February 13, 1903, and when a decision was necessary as to what demands ought to be made on the Venezuelan Government, the question of damage due to the acts of insurgents naturally became prominent. His Majesty's Government, having carefully considered the past and present circumstances of Venezuela, which are of a very exceptional kind, came to the conclusion that in dealing with claims of this nature two alternative methods were possible:

(1) That foreign claimants should not receive compensation for damage caused by revolutionaries.

(2) That if any foreign claimants received such compensation British subjects should receive the same treatment.

Great Britain enjoys by treaty the advantages of the most-favored nation, and for this as well as other reasons took the view stated above. To show that His Majesty's Government had always consistently held this view, it may be pointed out that in forwarding claims to the Venezuelan Government the British minister had, long before the blockade, always asked that they should be settled on the same principle as might be applied to other nations.

---

[a] This principle was followed in the cases of A. A. Pearse, F. G. Fitt, heirs of Christian Philip, W. N. Meston, W. A. Guy, Fortunato Amar, L. L. Michenaux, and Abdool Currim, which are not reported in this volume. For discussion of principle here laid down see Kummerow case, p. 526, Sambiaggio case, p. 666, Guastini case, p. 730, Padrón case, p. 923, and Mena case, p. 931.

In the view of His Majesty's Government it was preferable that of the two principles stated above No. 1 should be the one adopted, failing this it was essential to secure the alternative, No. 2.

At the same time it was considered that, owing to the light in which revolutions had come to be regarded by the people of Venezuela, there would be nothing contrary to justice in acting upon the latter principle.

The only way to give effect to these views seemed to be to obtain from Venezuela an agreement wide enough to cover the second principle if it should become necessary to act upon it.

His Majesty's Government have throughout acted consistently on these lines and have made no secret of the position taken up by them on the matter.

Accordingly, upon the sitting of the Commission, His Majesty's Government brought forward only such claims as were based upon the acts of the Venezuelan Government itself, without in any way giving up the right to present those of the other category if it should prove necessary. This course was followed until revolutionary awards had been made in favor of French and German claimants.

Since, therefore, it was no longer possible to act upon the principle originally favored, it was decided to present to the Commission claims for damages due to the acts of the insurgent forces. These claims are supported upon the ground that the recovery of damages so caused is recognized by the protocol of February 13.

In order to show what the terms of the protocol were meant to include, it is necessary to refer to the circumstances under which the protocol was signed and to what had occurred previously.

His Majesty's Government having for a long time presented to the Venezuelan Government claims due not only to the acts of their own troops, but also to the acts of insurgents, without being able to obtain any redress, were at length compelled, in common with the German Government, to declare a blockade of Venezuelan ports. This blockade was not raised until after the signing, and upon the terms of the protocol of February 13.

This protocol was settled after negotiations between His Majesty's representative and Mr. Bowen as representing the Venezuelan Government. In order correctly to interpret the terms of the protocol regard should be paid to the stage of the negotiations at which the exact words ultimately used first appear, and to the connection in which they are there used.

The first step taken by the Venezuelan Government toward the raising of the blockade was a communication from Mr. Bowen through the Government of the United States to His Majesty's Government, asking that they and the German Government would refer "the settlement of claims for alleged damage to the subjects of the two nations during the civil war to arbitration."

To this a reply was sent by the two Governments, which is here quoted, December 23, 1902:

His Majesty's Government have in consultation with the German Government taken into their careful consideration the proposal communicated by the United States Government at the instance of that of Venezuela.

The proposal is as follows:

That the present difficulty respecting the manner of settling claims for injuries to British and German subjects during the insurrection be submitted to arbitration.

The scope and intention of this proposal would obviously require further explanation. Its effect would apparently be to refer to arbitration only such claims as had reference to injuries resulting from the recent insurrection. This formula would

evidently include a part only of the claims put forward by the two Governments, and we are left in doubt as to the manner in which the remaining claims are to be dealt with.

Apart, however, from this some of the claims are of a kind which no government would agree to submit to arbitration. The claims for injuries to the persons and properties of British subjects owing to the confiscation of British vessels, the plundering of their contents and the maltreatment of their crews, as well as some claims for the ill usage and false imprisonment of British subjects, are of this description. The amount of these claims is apparently insignificant, but the principle at stake is of the first importance, and His Majesty's Government could not admit that there was any doubt as to the liability of the Venezuelan Government in respect of them.

His Majesty's Government desire, moreover, to draw attention to the circumstances under which arbitration is now proposed to them.

The Venezuelan Government have, during the last six months, had ample opportunities for submitting such a proposal. On the 29th of July and again on the 11th of November it was intimated to them in the clearest language that unless His Majesty's Government received satisfactory assurances from them, and unless some steps were taken to compensate the parties injured by their conduct, it would become necessary for His Majesty's Government to enforce their just demands. No attention was paid to these solemn warnings, and, in consequence of the manner in which they were disregarded, His Majesty's Government found themselves reluctantly compelled to have recourse to the measures of coercion which are now in progress.

His Majesty's Government have, moreover, agreed already that in the event of the Venezuelan Government making a declaration that they will recognize the principle of the justice of the British claims, and that they will at once pay compensation in the shipping cases and in the cases where British subjects have been falsely imprisoned or maltreated, His Majesty's Government will be ready, so far as the remaining claims are concerned, to accept the decision of a mixed commission which will determine the amount to be paid and the security to be given for payment. A corresponding intimation has been made by the German Government.

This mode of procedure seemed to both Governments to provide a reasonable and adequate mode of disposing of their claims. They have, however, no objection to substitute for the special Commission a reference to arbitration with certain essential reservations. These reservations, so far as the British claims are concerned, are as follows:

1. The claims (small, as has already been pointed out, in pecuniary amount) arising out of the seizure and plundering of British vessels and outrages on their crews and the maltreatment and false imprisonment of British subjects, are not to be referred to arbitration.

2. In cases where the claim is for injury to or wrongful seizure of property, the question which the arbitrators will have to decide will only be (a) whether the injury took place and whether the seizure was wrongful, and (b) if so, what amount of compensation is due. That in such cases a liability exists must be admitted in principle.

3. In the case of claims other than the above, we are ready to accept arbitration without any reserve. * * *

It will be seen from this that in the first place all claims are to be submitted to arbitration; that as regards claims "arising from the recent insurrection" where such claims are for injury to or wrongful seizure of property the allied Governments will only accept arbitration on the express terms "that in such cases a liability exists must be admitted in principle." Finally, in the case of other claims arbitration without any reserve is accepted.

It is clear that a meaning beyond the ordinary submission to arbitration must be given to this very pointed and special admission of liability. It admits as not open to discussion some principle which might be open to argument if nothing more than a bare submission to arbitration were found.

As it occurs in this document the meaning is plainly that—

As regards all claims arising out of the recent insurrection, whether due to their own acts or to those of insurgents, the Venezuelan Government must admit their liability. Otherwise the blockade will not be raised.[a]

[a] See Appendix, p. 1033.

These particular terms were never afterwards discussed. In the protocol the Venezuelan Government admit their liability in these very words, and therefore with the same meaning.

There is nothing unreasonable in this. This treaty was made under pressure of a blockade. Under such circumstances what is more natural than to find that the blockading power has insisted upon its own standard of right?

To say that in face of the words "the Venezuelan Government admit their liability" the Venezuelan Government are only to be held liable under accepted and recognized principles of international law is to say that these words carefully and deliberately inserted in an important section of a treaty are without meaning or bearing on the effect of the treaty.

If it be suggested that "admit their liability" means that the Venezuelan Government agree not to raise as a defense that these specially mentioned claims are a matter for the law courts, it may be pointed out that if a claim which would otherwise be the subject of ordinary litigation be submitted to arbitration, that fact alone means that all other jurisdictions are, as regards that claim, set aside and superseded by the jurisdiction of the arbitral tribunal. Therefore, the further provision that the Venezuelan Government admit their liability would be superfluous and meaningless in the class of claims here submitted to arbitration.

This admission, then, is an acknowledgment on the part of the Venezuelan Government that they take upon themselves liability for all claims of the kind specified arising out of the insurrection, whether done by themselves or by insurgents.

Since injury to or seizure of property is necessarily wrongful in the case of insurgent forces, it is only needful to prove that they took place and arose out of the insurrection, and liability at once attaches to the Venezuelan Government, the only remaining question being one of amount.

It has already been indicated that this liability for the acts of insurgents in the case of a country so circumstanced is a doubtful point of international law, depending as it does upon the question whether the country is "well-ordered to an average extent" (Hall, p. 226), a point difficult and embarrassing to discuss. The admission of liability found here is therefore just such as would be expected under the circumstances.

It is not necessary to pursue the matter further, since, for the present purpose, it is sufficient to rely on the liability admitted in the protocol, without reference to the principles of international law. Attention is called to the point merely to show that His Majesty's Government have not acted in an arbitrary or unreasonable manner.

Upon another ground also this tribunal ought to interpret the words "admit their liability" in the sense above stated.

The treaty between Great Britain and Venezuela contains the following provision:

> In whatever relates to the safety of * * * merchandise, goods, or effects, * * * as also the administration of justice, the subjects and citizens of the two contracting parties shall enjoy * * * the same liberties, privileges, and rights as the most favored nation.

All awards given by the Mixed Commissions are to be paid out of one fund. It would therefore, in view of the above treaty, be a denial

of equity if the subjects of any other nation were to be paid sums of money out of this fund upon a more favorable principle than British subjects.

German and French subjects have now obtained awards for damage caused by revolutionaries, which will be so paid.

When, therefore, words have to be interpreted which admit of any possible doubt as to their meaning—though it is contended that no such doubt exists here—regard must be paid first to the treaty, and secondly to the provision of the protocol, that decisions are to be based upon absolute equity. In such a case it is the duty of this tribunal to give to the words the most favorable possible interpretation as regards British subjects if by so doing the treaty rights of British subjects will be the better maintained. Therefore, in view of the treaty, the admission of liability must be read in the sense of a stipulation that, in awarding payments out of the common fund, British subjects shall be paid on as favorable a principle as the subjects of any other nation.

That is, since subjects of other nations receive payments on the ground of the liability of the Venezuelan Government for acts of insurgents, "admit their liability" must be read as conceding to British subjects the right to be paid on the same principle, i. e., for damages caused by the acts of revolutionaries.

GRISANTI, *Commissioner:*

His Britannic Majesty's learned agent in his last argument confines himself almost exclusively to examining the circumstances and discussions which preceded the signing of the protocol of February 13, 1903, maintaining that the Government of Venezuela is liable for damages caused by revolutionists to British subjects.

The most suitable manner of interpreting a treaty between nations and a contract between private parties is to analyze carefully and minutely, without prejudice, the clauses of the treaty, which are the plain, true, authentic, and solemn meaning intended to be conveyed by the contracting parties, and of the reciprocal duties assumed by them by virtue of their mutual agreement. The examination of the preliminary work only entails the examination of the contentions and arguments which each of the contracting parties made and attempted to maintain, contentions and arguments which must necessarily be at variance and even contradictory, as thus only could the controversy exist. With regard to the preparatory work of legislation, Laurent says:

> En apparence, les travaux préparatoires sont le commentaire authentic de la loi, puisque c'est le législateur lui-même qui nous apprend ce qu'il veut; en realité, ces travaux nous font seulement assister à l'élaboration de la loi, ils ne sont pas l'œuvre du législateur, mais de ceux qui ont contribué à faire la loi. Le texte seul a une autorité légale. Tout ce qui a été dit pendant que la loi se laborait n'est pas la loi, et ou ne peut s'en prévaloir pour ajouter au texte, ou pour le modifier en quoi que ce soit, car ce ne sont que des opinions individuelles de ceux qui ont concouri à faire la loi. (Cours Élémentaire de Droit Civil, Vol. I, p. 22.)

This same criterion must be applied to the study of preliminary conferences leading to the negotiation of a treaty, and consequently to those preceding the protocol, confining its application, naturally, to the contracting parties. Because, although it is true that the blockade and cannons of the allied powers greatly strengthened their demands, it is not true that they could enforce their absolute will. Such will had to be held in check, but unfortunately it was not curbed as much as justice demanded.

Now, confining myself to the argument of His Britannic Majesty's agent in regard to the protocol itself, I am sorry to have to say that the meaning he gives to Article III is at variance with the proper interpretations of conventions.

Said article provides that "The Government of Venezuela admit their liability in cases where the claim is for injury to, or wrongful seizure of, property," etc., which clause can only be understood in its legal sense—that is to say, that the Republic answers for injuries caused by the National Government and by such persons as represented it. For Venezuela to assume responsibility for damages caused by revolutionists contrary to the principles of unquestioned justice in the general opinion of statesmen, and in the practice of nations, it would be necessary that it should be so stipulated in the protocol expressly and in the clearest manner; and it is not so stipulated. Justice and equity do not admit of amplifying the clause of the protocol to include and sanction an obligation which is contrary to principle. In case the clause was not plain (which it is) it could not be interpreted in a sense which would burden the party bound (that is, Venezuela) as violating accepted juridic principles. These keep powerful parties within the bounds of law, whereby they support the weaker and maintain the peace of the world.

His Britannic Majesty's agent affirms that Great Britain considered it preferable to strike a medium between these two extremes:

1. That foreign claimants should not receive compensation for damages caused by revolutionists.
2. But that if any foreign claimants received such compensation British subjects should receive the same treatment.

And that, although she considered the first preferable, she adopted a general form which would embrace the second if necessary.

This argument, which is of itself inadmissible, has already been refuted. From the moment two nations enter into a treaty they must agree in the sense and meaning of the same; and it is not right for one of the parties to reserve to itself *in pectore* the privilege of enlarging its scope in performance for reasons independent of the intention of both. It must be observed that this Mixed Commission has been acting since June 1, and it was not until September that His Britannic Majesty's agent decided to present the first claim for revolutionary damages; such determination was made in view of two awards made by the umpires of the Venezuelan-French and the Venezuelan-German mixed commissions. It is therefore evident that these awards caused the British Government to set aside their primary conviction, which was wholly in accordance with justice and equity.

His Britannic Majesty's agent asserts that by virtue of Article IX of the treaty of 1835 between Venezuela and Great Britain the subjects of the high contracting parties shall, in the territory of the other nation, enjoy the same privileges, prerogatives, and rights as those of the most-favored nation. This is true, but said clause can only apply to the matters purposely designated in the article which contains this stipulation, v. g., in everything relating to loading and unloading of vessels; security of merchandise, goods, and articles; the acquisition of goods of all kinds and denominations by sale, donation, exchange, testament, or any other way whatsoever; as also to the administration of justice. The latter point being the only one which, though in a

most remote way, might have any connection with the claim in discussion, means only that British subjects in Venezuela, just as Venezuelan citizens in England, have the same warranties, securities, and recourses as other aliens for the protection and maintenance of their respective rights before the courts of justice established by the local laws of each nation. Said clause is not applicable to these mixed commissions, which are of a very extraordinary nature; and if it were, other countries which have agreed with Venezuela upon the provision of the most-favored nation would already have protested against some of the clauses of the Venezuelan-British protocol. On the other hand, as these mixed commissions proceed separately and absolutely independently of one another, and as the persons who constitute them must use their own individual judgment in order to render their decisions according to their own belief and conscience, the decisions of other commissions can not be set up to serve as a guide for those which this Commission will have to make.

The argument contained in the following paragraph is no more forcible:

> All awards given by the mixed commissions are to be paid out of one fund. It would, therefore, in view of the above treaty, be a denial of equity if the subjects of any other nation were to be paid sums of money out of this fund upon a more favorable principle than British subjects.

Equity would be violated in injuring Venezuela, who is held liable to pay claims which are entirely unfounded.

In the preliminary discussion which arose in the case of Consul de Lemos, I demonstrated that publicists, such as Calvo, Fiore, Bonfils, and Seijas, in addition to the statesmen—Lord Stanley, Count Nesselrode, Lord Granville, and Lord Palmerston—are unanimously of opinion that nations are not liable for injuries sustained by foreigners in times of war, considering such irresponsibility *absolute* when said injuries are caused by revolutionists or by Government functionaries when compelled by the fatality of circumstances, confining the obligation of repairing only willfully committed injuries by the same. I consider it unnecessary to reinsert those quotations, which, moreover, would make this statement extremely long. I might likewise cite the opinions of other publicists and statesmen, but I do not consider it necessary, as the point is not capable of being disputed on the policy and practice of nations. Governments are not obliged to compensate for injuries committed by insurgents. His Britannic Majesty's agent having so understood, has sought to fix the liability from the terms of the protocol.

By virtue of the reasons stated I ask that the supplemental claim of the Aroa Mines (Limited) be declared inequitable and unlawful.

Great Britain has always professed the principle that governments are not liable for damages caused by rebels; Venezuela has likewise upheld the same doctrine at all times, as is shown by the executive decree of February 14, 1873. (Official Compilation of Laws, vol. 5, p. 243, No. 1820, art. 6.)

It is impossible for these two nations to have revoked said principle in the protocol without having expressly and definitely so stated.

PLUMLEY, *Umpire:*

At the beginning of the umpire's opinion upon the important questions involved in this case, he desires to express his sense of obligation to the learned agents and the honorable Commissioners of both Gov-

ernments for their very able and painstaking presentation of their views upon the points raised, and for their valued assistance in the matter of authorities and documents.

This case raises the question whether the Government of Venezuela shall be held responsible to indemnify the claimants for injuries and losses received at the hands of revolutionists during the last civil war.

Before entering upon an analysis of the case itself there are several matters which may well be considered.

It is insisted upon by the claimant Government and resisted by the respondent Government that the paragraph in Article III of the February protocol, in which occurs a certain admission of liability on the part of Venezuela, is, when properly interpreted and applied, an absolute and unavoidable admission of liability for all claims arising out of the recent insurrection, whether due to their own acts or to those of insurgents.

In the claim of de Lemos, upon the preliminary objection of the learned British agent, raising the question that upon the terms of the protocol of February 13, 1903, "the Venezuelan agent is not entitled to set up any matter of principle as an answer to this claim" because of the said admission of liability in said Article III of the protocol, and that there remained only an inquiry as to the facts, the umpire held in his interlocutory opinion therein (p. 309)—

that the word "injury" was chosen because of its legal adaptation and significance, and not in its colloquial sense.

That (p. 309)—

the word "injury" was taken by the signatory parties to import a legal wrong, and in accordance with its fixed and determinate use in law as involving and importing *ipso facto* an *intentional wrongdoing* on the part of those responsible therefor.

By giving to this word its meaning in law and applying it to a document of peculiar legal importance drawn and carefully considered by minds of profound scholarship and erudition in law, skilled in words accurate and apt, in sentences short, clear, and trenchant, it is certain we can do no violence to the thought. By adopting any other interpretation of the language used it becomes ambiguous, indiscriminative, and inapt. * * *

The umpire regards the section quoted from Article III of the same import and value as though it had been written:

"The Venezuelan Government admit their liability in cases where the claim is for a legal injury to property, and consequently the question which the Mixed Commission will have to decide will only be:

"(a) Whether the legal injury took place. * * *

"(b) If so, what amount of compensation is due."

The question in each case being whether by the law governing the facts in the case there has been such an injury. (See p. 310.)

In the case then before the umpire he held (p. 310) that there was open for discussion and decision (a) whether the acts complained of were wrongful or rightful governmental acts, (b) whether the injuries received were a necessary sequence of the existing conditions, or (c) resulted from some wrongful *act* or *neglect* of the Venezuelan Government.

In the claim of James Crossman,[a] which was for the seizure and appropriation by Government troops of certain personal property of the complainant, the learned agent for Venezuela in his answer contended that upon the admitted facts the property was not taken by virtue of the orders of an officer, or because of neglect by the military authorities, but was in fact a necessary calamity of civil war, and that

[a] Page 298.

the claimant must be remitted to his action at law against those who were responsible therefor.

To this answer the learned British agent raised a preliminary objection, insisting that by the terms of Article III of the protocol of February 13 the Venezuelan Government had denied to themselves the right to raise the questions of law named in their answer and that in virtue of those admissions "the only questions open to the Commission are: (1) Did the seizure take place? (2) Was the seizure wrongful or not? (3) If wrongful, how much is due?"

In the interlocutory opinion of the umpire in said case, he held[a] that the word "seizure" as used in said protocol did not include property "taken by robbery, theft, pillage, plunder, sacking or trespass." That it was "limited to a seizing under and by virtue of authority, civil or military." That "there is required in every case a wrongdoer as well as that wrong has been done or suffered. A wrong intent or willful purpose must accompany the act." "Not only must the act be willful or with wrong intent, *but it must be perpetrated by some one having a right whereby to declare and express a governmental will and intent.*" The umpire now underscores these words to call especial attention to their force and inclusiveness concerning the question in hand.

In neither of these cases was the opinion of the umpire given in expectation that he would later meet before this Commission the question of responsibility by Venezuela for the acts of unsuccessful revolutionists, since the historic attitude of Great Britain concerning the principle in issue would negative such a proposition, save upon exceptional conditions carefully defined by international law, in the development of which law that Government had borne a very important and honorable part.

Held in their entirety and to their full rigor, the umpire would be compelled by the force of these two opinions to declare *stare decisis* upon the question of admitted responsibility for the acts of unsuccessful revolutionists, in which case such question would stand before this Commission upon the respective merits of each claim having only an admitted liability if well founded in law and fact, in justice and equity.

Both of these opinions were given on mature deliberation after careful and painstaking study of the protocols in all of their parts and of such authorities upon the questions under consideration as were at his hand. He did not in the opinions there given cite these authorities or quote therefrom. As briefly as may be, he will now place them upon the record, that he may have them before him to aid in the present determination, and that his honored associates, the learned agents and their respective Governments, may know the authorities he accepted and upon which he relied in coming to his aforementioned decisions.

The intention of the *parties* is the pole star of construction; but their intention *must be found expressed in the contract* and be consistent with rules of law. The court will not make a new contract for the parties nor will words be *forced* from their *real signification.* (Bouvier, Law Dict., vol. 1, p. 429.)

One leading principle of construction is to carry out the intention of the authors of or parties to the instrument or agreement so far as it can be done without infringing upon any law of superior binding force.

In regard to cases where this intention is clearly expressed, there is little room for variety of construction; and it is mainly in cases where the intention is indistinctly disclosed, though fairly presumed to exist in the minds of the parties, that any liberty of construction exists.

---

[a] Page 330.

Words, if of common use, are to be taken in their *natural*, plain, *obvious*, and ordinary significations; but if technical words are used, they are to be taken in a technical sense, unless a contrary intention clearly appear in either case *from the context*. (Bouvier, Law Dict., vol. 1, p. 416, citing 9 Wheat., 188; 32 Miss., 678; 49 N. Y., 281; 54 Cal., 111.)

Technical. Of or pertaining to the useful or mechanic arts, or to any *science*, *business*, or the like; specially appropriate to any art, *science*, or *business;* as the words of an indictment must be technical. Blackstone. (Webster.)

Technicality. That which is technical or peculiar to any trade, profession, sect, or the like. (Ib.)

In construing written laws, it is the intent of the lawgiver which is to be enforced; this intent is found in the law itself. The first resort is to the natural significance of the words employed, in their order of grammatical arrangement. (Bouvier, Law Dict., vol. 1, p. 1106, citing Cooley Const. Lim., 70; 130 U. S., 670.)

Statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or absurd conclusion. (Bouvier, Law Dict., vol. 1, p. 1106, citing 144 U. S., 47.)

Where a law is expressed in plain and unambiguous terms, whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and *consequently no room is left for construction*. (Bouvier, Law Dict., vol. 1, p. 1106, citing 130 U. S., 671; 99 id., 72; 2 Cranch, 399.)

Courts will not assume to make a contract for the parties which they did not choose to make themselves. (Morgan County *v.* Allen, 103 U. S., 498.)

When language is susceptible of two meanings, one of which would work a forfeiture which the other would not, the latter must prevail. (Bouvier, Law Dict., vol. 1, p. 1106, citing 71 Wis., 177.)

When a court of law is construing an instrument, whether a public law or a private contract, it is legitimate, if two constructions are fairly possible, to adopt that one which equity would favor. (Bouvier, Law Dict., vol. 1, p. 416, citing 160 U. S., 77.)

Neither will it be allowed to contravene established rules of law. (Bouvier, Law Dict., vol. 1, p. 124.)

All statutes are to be construed with reference to the provisions of the common law, and provisions in derogation of the common law are held strictly. (Bouvier, Law Dict., vol. 1, p. 416, citing 2 Black, 358; 117 Ind., 447; 4 Mich., 322; 5 W. Va., 1.)

Where words have two senses of which only one is agreeable to the law, that one must prevail. (Bouvier, Law Dict., vol. 1, p. 1106, citing Cowp., 714.)

Construction is against claims or contracts which are in themselves against common right or common law. (Bouvier, Law Dict., vol. 1, p. 429.)

Where the language of an instrument requires construction, it shall be taken most strongly against the party making the instrument. (Orient Mut. Ins. Co. *v.* Wright, 1 Wall., 456, U. S. Sup. Ct.)

A party who takes an agreement prepared by another, and upon its faith incurs obligations or parts with his property, should have it construed most favorably to him. (Noonan *v.* Bradley, 9 Wall., 394, U. S. Sup. Ct.)

What one party to a contract understands or believes is not to govern its construction unless such understanding or belief was induced by the conduct or declaration of the other party. (National Bank of Metropolis *v.* Kennedy, 17 Wall., 19, U. S. Sup. Ct.)

Agreements are construed most strongly against the party proposing. (Bouvier, Law Dict., vol. 1, p. 124, citing 6 M. & W., 662; 2 Pars. Contr., 20; 3 B. & S., 929; 7 R. I., 26.)

The more the text partakes of a solemn compact the stricter should be its construction. (Bouvier, Law Dict., vol. 1, p. 1107.)

Every agreement should be so complete as to give either party his action upon it; *both* parties *must assent* to *all* its terms. (Bouvier, Law Dict., vol. 1, p. 428, citing 3 Term, 653; 1 B. & Ald., 681; 1 Pick., 278.)

The parties must agree or assent. They must assent to the same thing in the same sense. (Bouvier, Law Dict., vol. 1, p. 123, citing 4 Wheat., 225, U. S. Sup. Ct.)

There is no contract unless the parties assent thereto. (Bouvier, Law Dict., vol. 1, p. 429.)

The whole contract is to be considered with relation to the meaning of any of its parts. (Bouvier, Law Dict., vol. 1, p. 429.)

All parts will be construed, if possible, so as to have effect. (Bouvier, Law Dict., vol. 1, p. 429.)

Words are to be taken, if possible, in their ordinary and common use. (Bouvier, Law Dict., vol. 1, p. 429.)

The subject-matter of the contract and the situation of the parties are to be fully considered with regard to the sense in which language is used. (Bouvier, Law Dict., vol. 1, p. 429.)

The law of the interpretation of treaties is substantially the same as in the case of other contracts. (Bouvier, Law Dict., vol. 2, p. 1137, citing Woolsey's Int. Law, 185; 22 Ct. of Claims U. S., 1.)

That the contracting party, who might and ought to have expressed himself clearly and fully, must take the consequences of his carelessness. (Phillimore, Int. Law, ed. 1854, vol. 2, p. 93.)

If two meanings are admissible, that is to be preferred which is least for the advantage of the party for whose benefit a clause is inserted, for in securing a benefit he ought to express himself clearly. (Woolsey, Intro. Int. Law, sec. 113.)

"To follow the ordinary and usual acceptation, the plain and *obvious* meaning of the language employed," which Phillimore says is the principal rule of interpretation. (Vol. I, sec. LXX.)

In all human affairs when absolute certainty is not at hand to point out the way we must take probability for our guide. In most cases it is extremely probable that the parties have expressed themselves conformably to the established usage, and such probability affords a strong presumption, which can not be overruled but by a still stronger presumption to the contrary. (Moore, 3621, quoting Vattel.)

When the language of a treaty, taken in the ordinary meaning of the words, yields a plain and reasonable sense, it must be taken as intended to be read in that sense, subject to the qualifications that any words which may have a *customary meaning in treaties* differing from their common signification *must be understood to have that meaning*, and that a sense *can not* be adopted which leads to an absurdity or to incompatibility of the contract with an *accepted fundamental principle of law.* (Hall, Int. Law., 350.)

International law names the source through which the claims of a British subject against Venezuela must come. (Wharton, Dig. Int. Law, sec. 215.)

The law of nations is the law of England. (IV Black. Com., 67; Phillimore, Int. Law, vol. 1, ed. 1854, 62 (in brackets), citing Triquet and others *v.* Bath; Peach and others *v.* same; Burrows Rep., 1480, quoting Lord Talbot as there saying: "The law of nations in its full extent was part of the law of England." (Woolsey, Intro. to Int. Law, sec. 29.)

The Supreme Court of the United States refuse to construe an act of Congress to be in violation of "the law of nations if *any other possible construction remains.*" (*Betsy*, 2 Cranch, 118, U. S. Sup. Ct., Marshall, C. J.)

An act of Parliament will be so construed, *if possible*, as not to conflict with the rule of international law covering the same subject-matter. Lord Stowell and Doctor Lushington insist that in a prize court an act of Parliament can not control, and if the act of Parliament plainly does conflict it is nugatory. (Holland's Studies in Int. Law, 199.)

The law of nations should be respected by the Federal courts as a part of the law of the land. (The *Nereide*, 9 Cranch, 388, U. S. Sup. Ct.)

The laws of the United States ought not, if it be avoidable, so to be construed as to infract the common principles and usages of nations or the general doctrines of international law. (Wharton, Int. Law Dig., vol. 1, sec. 8, p. 30, citing Talbott *v.* Seaman, 1 Cranch, 1.)

The law of nations is the great source from which we derive those rules respecting belligerent and neutral rights which are recognized by all civilized and commercial states throughout Europe and America. (Wharton, Int. Law Dig., vol. 1, sec. 8, p. 30.)

In what has been stated I have referred exclusively to the international obligations imposed on the United States by the general principles of international law, which are the only standards measuring our duty to the Government of Honduras. (Mr. Bayard, Sec. of State, to Mr. Hall, Feb. 6, 1886.)

The law of nations is the *science* of the law subsisting between nations or states and of the obligations that flow from it. (U. S. *v.* The *Active*, 24 Fed. Cases, 755, quoting Vattel.)

CLAIMS.

A claim "is, in a just juridical sense, a demand of some matter, as of right, made by one person upon another, to do or to forbear to do some act or thing as a matter of duty." (Prigg *v.* Penna., 16 Pet., 539, U. S. Sup. Ct.)

In my judgment a claim upon the United States is something in the nature of a demand for damages arising out of some alleged act or omission of the *Government* not yet provided for or acknowledged. As the term imports, it is something asked for or demanded on the one hand and not admitted or allowed on the other. (Moore's Int. Arb., 3623, citing Dowell *v.* Cordwell, 4 Saw., U. S. Cir. Ct., 228, and quoting from Deady, J.)

On a claim against a foreign government for spoliation the demand is founded upon the law of nations and the obligation of the offending government is perfect. (Emerson *v.* Hall, 13 Pet., 409, U. S. Sup. Ct.)

Claim: 1. A demand of a right or supposed right; a calling on another for something due or supposed to be due. "Doth he lay *claim* to thine inheritance?"—Shak. 2. A right to claim or demand; a title to any debt, privilege, or other thing in possession of another. "A bar to all *claims* upon land."—Hallam. 3. The thing claimed or demanded; that to which any one has a right, as a settler's claim (U. S. and Australia). (Webster.)

Claim: 1. A demand of anything as due. 2. A title to any privilege or possession in the hands of another. (Johnson.)

In the Spanish language the word of corresponding meaning is *reclamación.*

"The opposition or contradiction which is made to anything as unjust." This is *reclamatio, oppositio.* (Salvá.)

"The demand made for anything by him who has the *right of property* in it against him who possesses or *denies* it." This is *reclamatio.* (Salva.)

Reclamación (claim): The opposition or contradiction that is made in words or in writing against anything as *unjust,* or by showing that it contradicts itself; and the claim or demand for anything by him who has the right of property in it against him who possesses it. (Escriche, Dict. of Legis.)

Claimant: 1. One who claims; one who demands anything as of *right;* a claimer. 2. A person who has a *right;* to claim or demand. (Webster.)

Claimant: He that demands anything as unjustly detained by another. (Johnson.)

In discussing the scope of the word "claim" in the treaty of 1819 between the United States and Spain, Mr. John Q. Adams, Secretary of State, in his letter to Messrs. White and others, of March 9, 1822, observed that the treaty under the general term "claims" provided for the settlement of claims on contracts as well as claims on *torts.* (Am. St. Papers, For. Rel. VI, 796.)

The term "claims" in the convention must be construed so as to confine it to demands which must have been made the subject of international controversy, or which are of such a nature as, according to received international principles, would entitle them on presentation to the official support of the Government of the complainant. (Moore, Int. Arb., 3615, quoting Sir Frederick Bruce, umpire, U. S. and New Granada.)

We are led to the general rule of law, which has always prevailed and become consecrated almost as a maxim in the interpretation of statutes, that where the enacting clause is general in its language and objects, and a proviso is afterwards introduced, that proviso is construed strictly and takes no case out of the enacting clause which does not fall fairly within its terms. (Supreme Court of the United States in U. S. *v.* Dickson, 15 Peters, 165.)

The rule seems to be:—that qualifying words are, while the general terms of submission are not, to be taken in a restrictive sense, if there is to be any distinction. (Moore, Int. Arb., 3626, citing Vorhees *v.* Bank, 10 Peters, 449; Wayman *v.* Southard, 10 Wheat., 30; Bond *v.* U. S., 19 Wall., 227.)

Fundamentally, however, there is no difference in principle between wrongs inflicted by breach of a monetary agreement and *other wrongs* for which the state, as itself the wrongdoer, is immediately responsible. (Hall, 4th ed., p. 294.)

The mixed commission under the convention with that Republic (Mexico) has always been considered by this Government essentially a judicial tribunal with independent attributes and powers in regard to its peculiar functions. (Daniel Webster, Sec. of State, concerning Mexican-U. S. convention of April 11, 1839.) (Moore, Int. Arb., 1242.)

INJURY.

Injury (Lat. *in,* negative, *jus,* a right.) A wrong or tort.

Injuries arise in three ways: First, by nonfeasance, or the not doing what was a legal obligation, or duty, or contract to perform; second, misfeasance, or the performance in an improper manner of an act which it was either the party's duty or his contract to perform; third, malfeasance, or the unjust performance of some act which the party had no right, or which he had contracted not, to do.

When the injuries affect a private right and a private individual, although often also affecting the public, there are three descriptions of remedies: * * * second, remedies for compensation, which may be by arbitration, suit, action. * * * (Bouvier, Law Dict., Vol. I, 1044.)

There is a material distinction between damages and injury. Injury is the *wrongful act* or *tort* which causes loss or harm to another. Damages are allowed as an indemnity to the person who suffers loss or harm from the injury. *The word injury*

denotes the illegal act, the term damages means the sum recoverable as amends for the wrong. (Bouvier Law Dict., vol. 1, p. 1045, citing 103 Ind., 319.)

Injury n.; pl. injuries. * * * L. injuria, fr. injurious, wrongful, unjust; pret. *in* — not + jus, right, law, justice; cf. F. injure. See *Just*, a.

Injury in morals and jurisprudence is the intentional doing of wrong. (Webster's Int. Dict.)

Damages in law is the estimated reparation in money for detriment or *injury* sustained; a compensating recompense or satisfaction to one party for a *wrong* or *injury* actually done to him by another. (Webster's Int. Dict.)

Damages. The indemnity recoverable by a person who has sustained an injury, either in his person, property, or relative rights through the *act* or *default* of another. (Bouvier Law Dict., vol. 1, p. 491.)

"There is no right to damages where there is no *wrong*. It is not necessary that there should be a tort, strictly so called—a willful wrong, an act involving moral guilt. The wrong may be either a willful, malicious *injury*, as in the case of assault and battery, libel, and the like, or one committed through mere motives of interest, as in many cases of conversion of goods, trespasses on lands, etc.; or it may consist in a mere neglect to discharge a duty," etc.; "or a simple breach of contract," etc.; "or it may be a wrong of another person for whose act or default a legal liability exists," etc. "But there must be something which the law recognizes as a *wrong*, some *breach* of a *legal duty*, some *violation* of a *legal right*, some *default* or *neglect*, some failure in responsibility sustained by the party claiming damages. *For the sufferer by accident or by* the *innocent* or *rightful acts* of *another can not claim indemnity for his misfortune.*" It is called *damnum absque injuria*—a loss without a wrong for which the law gives no remedy. (Bouvier Law Dict., vol. 1, p. 492, citing many cases and law writers.)

The umpire is not of opinion that he would be justified in making an award against the Mexican Government.

The damages and losses alleged by the claimants seem rather to be the result of the inevitable accidents of a state of war than to have arisen from a wanton destruction of property by Mexican authorities. (Moore Int. Arb., 3868, Shattuck's case, Thornton, umpire, Mex. Com., 1868.)

The umpire is further of opinion that the damage done to cotton crops by cavalry passing over them in the neighborhood of the scene of hostilities must be attributed to the hazards of war, and for which the government of the belligerent can not be held responsible. (Moore Int. Arb., 3670, Cole's case, Thornton, umpire, Mex. Com., 1868.)

The umpire is of opinion that when during time of war and in the enemy's country straggling soldiers and marauders go about robbing and destroying property it can not be considered that it is an injury done by the authorities of the country whose troops are invading an enemy's country * * * . The umpire therefore awards that the above mentioned claim be dismissed. (Moore Int. Arb., 3670, Buentello's case, Thornton, umpire, Mex. Com., 1868.)

Damages done to property in consequence of battles being fought upon it between the belligerents is to be ascribed to the hazards of war and can not be made the foundation of a claim against the government of the country in which the engagement took place. (Moore Int. Arb., 3668, Riggs's case, Thornton, umpire, Mex. Com., 1868.)

The umpire is therefore of opinion that the claimant was committing no illegal act in transporting his cotton through Coahuila and Tamaulipas with destination to Matamoras on the 20th of September, 1864, and that as it was seized by Mexican authorities the Mexican Government is bound to indemnify the claimant. (Moore Int. Arb., 1327, Weil case, Mex. Com., 1868.)

The umpire can not doubt that robbery of cattle on the borders of Texas adjacent to Mexico and their transportation across the Rio Grande has been carried on for several years past; but he thinks that the proofs are entirely insufficient and he is not at all satisfied that the robbers were always Mexican citizens and soldiers; that bands of robbers were organized on the Mexican side of the river under the eyes and countenance of the Mexican authorities, or that the sufferers by these plunderers were refused redress by those authorities when they were appealed to in particular instances with regard to specific cattle proved by the owners to have been stolen. * * * The umpire can not see that in the above-mentioned case there are sufficient grounds for holding the Mexican Government responsible for the losses suffered by the claimant, and he therefore awards that the claim be dismissed. (Moore Int. Arb., 3037, Dicken's case, Thornton, umpire, Mex. Com., 1868.)

* * * At this period Halstead entered Mexico without a passport, committing not "a criminal violation of the laws of Mexico"—passports are a matter of police—

but an offense for which he was arrested according to the laws of Mexico. He was legally arrested and kept legally in prison for a couple of weeks, but he was held a prisoner for something like four months, plainly not according to right and justice. (Moore Int. Arb., 3244, Halstead's case, Lieber, umpire, Mex. Com., 1868.)

See also Mexican Claims Commission, convention of 1868, the following cases: Moore Int. Arb., 3669, Blumenkron; 3674, Wilson; 3672, Antrey; 3671, Schlinger; 3012, Donoughho; 3021, Wilson; 3027, Lagueruene; 3032, Bowley; 3033, Moliere; 3721, Cole; 3722, Mark; 3726, Brach; 3673, Johnson; 3668, Baker.

SEIZURE.

Seize. (Law.) To take possession of by virture of a warrant or other legal authority; as, the sheriff seized the debtor's goods. (Webster's Int. Dict.)

Seizure. The act of seizing, or the state of being seized; sudden and violent grasp or gripe; a taking into possession, as the seizure of a thief, a property, a throne, etc. Retention within one's grasp or power; hold; possession; ownership. (Webster's Int. Dict.)

Seizure. In practice, the act of taking possession of the property of a person condemned by the judgment of a competent tribunal to pay a certain sum of money, by a sheriff, constable, or other officer lawfully authorized thereto, by virtue of an execution, for the purpose of having such property sold according to law to satisfy the judgment. (54 N. W. Rep. (Wis.), 30.) The taking possession of goods for a violation of public law; as, the taking possession of a ship for attempting an illicit trade. (2 Cra., 187; 4 Wheat., 100; 1 Gall., 75; 2 Wash. C. C., 127, 567; 6 Cowp., 404; Bouvier Law Dict., vol. 2, p. 976.)

The Constitution of the United States, amendment, article 4, declares that "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and *seizures*, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be *seized*." (Bouvier Law Dict., vol. 2, p. 969, citing 11 Johns, 500; 3 Cra., 447; Story, Const., 1900; 116 U. S., 616.)

In the conventional agreement between the United States of America and Peru, March 17, 1841, these words are used: "Seizures, captures, detention, sequestrations, and confiscations of their vessels." And the limits placed are to "claims on account of the seizure, damage," etc. (Moore Int. Arb., 4590–4607.)

JUSTICE.

Justice. The quality of being just; conformity to the principles of righteousness and rectitude in all things; strict performance of moral obligations; *practical conformity* to *human* or *divine law;* integrity in the dealings of men with each other; rectitude; equity; uprightness.

The rendering to everyone of his due or right; just treatment; requital of desert; merited reward or punishment; that which is due to one's conduct or motives.

Examples of justice must be made for terror to some. Bacon. (Webster's Int. Dict.)

Justice refers more especially to the *carrying out of law*, and has been considered by moralists of three kinds: (1) Commutative justice, which *gives every man his own property*, including things pledged by promise; (2) distributive justice, which gives every man *his exact desert;* (3) general justice, which carries out all the ends of law, though not in every case through the precise channels of commutative or distributive justice. (Webster's Int. Dict.)

The constant and perpetual disposition to render every man his due. The conformity of our *actions* and our *will* to the *law*.

There is properly but one single general rule of right, namely: Give every one his own.

The foregoing are the authorities upon which the umpire rested his opinions in the two aforementioned cases, and the force and effect of which opinions were that the expressions in question were to be given their usual, ordinary, and obvious meaning when employed in claims treaties under accepted and recognized principles of international law, and that the effect and purpose of admitted liability on the part of Venezuela was not to extend the meaning and application of "injuries" and "wrongful seizures" beyond their well-established bounds.

The learned agent of Great Britain in the case before us contends that this holding practically emasculates the admission of liability and deprives it of all meaning and bearing in connection with the treaty, and that it can not be presumed that this expression, carefully selected and deliberately inserted in an important section of such treaty, was to be treated as without meaning and effect. The learned agent urges that the treaty under consideration was made while a blockade of the Venezuelan ports was in progress and that his Government made the acceptance of liability, in the sense and in the words finally used in the perfected treaty, a condition precedent to the lifting of the blockade; and that this fact is, in his judgment, conclusive in favor of his proposition that Venezuela thereby admitted her liability for all claims arising out of the recent insurrection, whether due to their own acts or to those of the insurgents.

Since there is no mention of civil wars or war of any kind in that part of the protocol, the umpire understands the learned agent's contention to rest upon the position that all injuries to property and all wrongful seizures thereof are included in Venezuela's admitted liability. That it is, in his present contention, applied to all claims arising out of the insurrection is simply because such claims are the only claims under consideration in this particular case.

The umpire is of opinion that the expression of admitted liability was not used carelessly or without purpose, but was intended to have grave and important effect upon the Commission assembled under the provisions of said treaty. The question is simply this: Is it the effect claimed by the learned agent or some other?

As held by the umpire, there was no ambiguity in the language used, and, as considered by the umpire, there was nothing ineffective in any of the provisions of the treaty. There seemed to him, on the face of its provisions, nothing to interpret, nothing to construe.

But the learned agent contends that, when viewed historically with a wise regard for all the conditions antecedent, proximate, and immediate, construction becomes necessary, and that when properly construed his contention will prevail; that there is, in fact, a latent ambiguity which first arises in the application of the treaty to the facts in hand.

It is held in Bouvier (Vol. I, p. 1107, citing 1 Dall., 426; 3 S. and R., 609), that "when there is a latent ambiguity which arises only in the application and does not appear upon the face of the instrument it may be supplied by other proof." That "the journals of a legislature may be referred to if the meaning of a statute is doubtful or badly expressed." (Bouvier, Vol. I, p. 417.) That in contracts in case of doubt "there must always be reference to the surrounding circumstances and the object the parties intended to accomplish." (Bouvier, Vol. I, p. 1107.)

The umpire has therefore carefully reviewed the historical status and the circumstances surrounding the parties at the time the treaty was made.

By the courtesy of the two Governments he is in possession of the Blue Book containing correspondence respecting the affairs of Venezuela, and the Yellow Book of Venezuela, together covering all the time which it is important to include in this inquiry, and it is from these two sources that the umpire has obtained his knowledge of the circumstances preceding and leading up to the blockade and the adjustment

of matters between the war powers and Venezuela, finally crystallizing in the respective protocols.

(1) The scene opens with a dispatch from the governor of Trinidad to the British colonial office, of date March 16, 1901, concerning an outrage on British subjects by the *Venezuelan* gunboat *Augusto*, the event having relation also to Patos Island. Representations concerning the same were made by the British minister resident at Caracas to the Venezuelan minister of foreign affairs prior to March 22, 1901 (No. 3); and, later, a report from the minister of the contemplated steps of the Venezuelan Government in reference thereto.

(2) Outrage on J. N. Kelly, of Trinidad, by *Venezuelan* soldiers, reported to the Marquis of Lansdowne by the British minister resident at Caracas by communication of date March 22, 1901, which outrage occurred during the then recent insurrection in the eastern part of Venezuela. On March 12 the British minister had communicated in writing (No. 6) to the Venezuelan minister of foreign affairs a description of this outrage, the last paragraph of which contains in part the following:

> I will not dwell on the prejudicial effect on the interests of Venezuela herself caused by occurrences of this nature, as I feel sure that your excellency will agree with me in thinking that the injury done—*not by insurgents*, but by *soldiers* of the *Government*—to an inoffensive and law-abiding immigrant— * * *

In connection with the *Augusto* incident, there were claims and counterclaims as to the respective rights of the British Government and of Venezuela in the island of Patos, both asserting sovereignty therein. (See No. 8 and inclosures 1 and 2 in No. 8.)

(3) Communication from the British minister resident at Caracas to the Marquis of Lansdowne, of date April 17, 1901, relating to the alleged burning and plundering of the sloop *Maria Teresa*, the property of a British subject, by a *Venezuelan* gunboat off Guiria during the then late disturbances on the Gulf of Paria and the maltreatment of British subjects in connection therewith, inclosure 9 in No. 11 being a copy of the communication addressed by the British minister at Carcaras to the Venezuelan secretary of foreign affairs. It appears from this communication that the sloop was first taken by the insurrectionary troops at Yrapa and ordered to proceed to Yaguarapaso with revolutionary soldiers, who were landed there. It is also claimed that this service to the revolutionary forces was compulsory, that the master received no compensation therefor, and that the sloop was engaged in lawful traffic. But there was no demand upon the Government of Venezuela because of the compulsory service under revolutionary orders, and these facts were referred to in an exculpatory and explanatory way.

(4) Communication No. 12, from the British minister resident at Caracas to the Marquis of Lansdowne, of date April 17, 1901, referring to the case of John Craig and his vessel, the *Sea Horse*, a British subject of Trinidad, for indignities and losses received at the hands of an unnamed *Venezuelan* guardacosta carrying a crew of eight men, whose commander it is alleged landed on the island of Patos, assaulted the subjects of Great Britain, and seized their property while they were peacefully engaged in their lawful avocations. Inclosure 8 in No. 12 is a copy of the communication made by the British minister to the Venezuelan secretary for foreign affairs calling his official attention to the facts and the importance of the Craig case.

In the reply of the Venezuelan secretary for foreign affairs of the same date (p. 27) he reviews the claim of Venezuela to the island of Patos as a part of her territory.

In the statement of Raphael José Ortega (p. 33), referring to the case of the *María Teresa*, it is alleged that this sloop was engaged in clandestine trade and in carrying implements of war to the revolutionists, and also that her captain was in league with them.

In the inclosure No. 20 (p. 35) there is a copy of the communication of the minister for foreign affairs to the British minister resident at Caracas, having reference to the case of John Craig, in which there is brought forward the charge of complicity in revolutionary matters as a justification for the Venezuelan acts.

(5) Inclosure 1 in No. 24 is a communication from the governor of Trinidad to Mr. Chamberlain, of date October 3, 1901, calling attention to the seizure of the sloop *Pastor* by the *Venezuelan* gunboat *Tutono* off the island of Patos. And as is shown in the communication from the British foreign office to the colonial office, No. 37, of date November 30, 1901, the incidents connected with the seizure, when taken with other like acts in reference to this island, make them a repeated violation of territory and as indicating a purpose on the part of Venezuela to consider and treat Patos as belonging to it, and therefore calling for a "strong remonstrance against any infraction of the sovereign rights of Great Britain." This was done by the British minister resident at Caracas by his communication to the Venezuelan minister for foreign affairs December 17, 1901 (inclosure 1 in No. 46), and on December 20, 1901, the Venezuelan minister for foreign affairs (inclosure 2 in No. 46, to the British minister resident at Caracas) replies to this communication, asserting that the matters there referred to—

must be considered in connection with the notorious circumstance that Venezuela considers the island in question as its legitimate possession.

(*a*) No. 25 is a communication from the customs to the British foreign office, of date November 8, 1901, concerning the fitting out of the *Ban Righ*, a matter which later assumed great importance in the minds of the Venezuelan Government, and was a cause of much feeling on their part against the British Government. This boat was nominally for the Colombian Government, and was fitted out as a vessel for offense and defense, and was loaded with a considerable quantity of arms and ammunition. At Antwerp it is alleged to have taken on a large quantity of arms and ammunition of French manufacture, and was expected to take on a consignment of shell at Pipe de Tabac, about 20 miles below Antwerp. (See Nos. 37 and 17 of date November 30, 1901.) Later the vessel was taken to Martinique and there turned over to General Matos. (No. 55.) On February 28, 1902, the Venezuelan Government took the position toward the British Government that until the latter would recede from its position of indifference and irresponsibility for the *Ban Righ* the Venezuelan Government could not consider "on bases of mutual cordiality the other matters which reciprocally concern" their respective Governments. On June 9, 1902 (No. 87), the Marquis of Lansdowne wrote the British minister that His Majesty's Government could not admit that there is any connection between the question of the Bolivar Railway and that of the *Ban Righ*, and could not acquiesce in the attempt of the Vene-

zuelan Government to postpone dealing with other pending questions until that of the *Ban Righ* was disposed of.

(*b*) Communication of date November 18, 1901, from General Pachano to the British minister resident at Caracas (inclosure 1 in No. 40), calling attention to the landing of a great quantity of rifles and of cartridges on the island of Tobago and asking for the mediation of the minister in obtaining from the colonial authorities measures to prevent these arms leaving Tobago to the harm of Venezuela.

The governor of Trinidad declined to interfere. (Inclosure 2 in No. 42.)

(6) No. 49, British colonial office to the British foreign office, of date January 25, 1902, calls attention to "the *seizure* and detention by the *Venezuelan authorities* of a colonial British-owned and British-registered sloop, the *Indiana*, in the waters of the Barima River, in Venezuelan territory."

(7) The governor of Trinidad to Mr. Chamberlain, of date April 17, 1902, calls attention to the conduct of Señor Figuredo, Venezuelan consul at Port of Spain, in connection with the dispatch of vessels from that port to Venezuela. This matter became one of serious importance and disturbance between the two Governments, and resulted in much correspondence between them, but no understanding.

(8) In the communication of the governor of Trinidad to Mr. Chamberlain of date May 12, 1902 (inclosure 1 in No. 88), attention is called to the destruction at Pedernales by the *Venezuelan* gunboat *General Crespo* of the British vessel *In Time*.

(9) Communication of the British minister resident at Caracas to the Marquis of Lansdowne, of date June 30, 1902 (No. 106), calling attention "to the seizure by a Venezuelan man-of-war on the high seas of the British vessel *Queen*," and stating that the attention of the Venezuelan Government had been called to the matter, with a request for information as to the steps proposed by them.

(10) Memorandum on existing causes of complaint against Venezuela by the British foreign office, of date July 20, 1902, No. 108, in which there appear case of seizures by the Venezuelan gunboat *Augusto*, case of the *Sea Horse*, case of the *María Teresa*, case of the *Pastor*, case of the *Indiana*, case of the *In Time*, case of the *Queen*. Under each case is a condensed statement of the facts accompanying each alleged outrage, the action of the British Government in connection therewith, and the position of the Venezuelan Government in reference thereto.

There follows, also, in said memorandum of causes for complaint a statement of the action of the Venezuelan consul at Trinidad, in which his offenses are summed up, and the fact also appears that the Venezuelan Government had been notified thereof and that notice had been taken of their communication.

In the same memorandum there occurs this:

> Besides these specific outrages and grounds of complaint there are cases in which British subjects and companies have large claims against the Venezuelan Government. The Venezuelan Government decline to accept the explanations and assurances of His Majesty's Government with regard to the *Ban Righ* as in any way modifying the situation. As a result, the position of His Majesty's legation at Caracas has been rendered for diplomatic purposes quite impracticable, as all representations, protests, and remonstrances now remain disregarded and unacknowledged.

Returning to an earlier date in the correspondence between the British Government and the Venezuelan Government, under date of

December 31, 1901 (No. 41), in the communication from the British minister resident at Caracas and the Marquis of Lansdowne, and referring to the fact that Venezuela had proclaimed the vessel *Ban Righ* a pirate, there is found this statement:

I have warned the Venezuelan Government unofficially that any infraction of *international law* with regard to the life and property of British subjects should be avoided. It is contended by the minister for foreign affairs that *international* law is overruled by the Venezuelan law of piracy.

In the index to the Blue Book there is this summary:

Ban Righ.—The Venezuelan Government offer reward for capture. They declare municipal law overrules international law.

The instructions of the Marquis of Lansdowne to the British minister resident at Caracas, of date July 29, 1902 (No. 110), directing him to make final protest and demand for reparation with a sharp alternative, cover the points named in the foregoing memorandum and no other.

In the statement of the British foreign office to the Admiralty, of date August 8, 1902 (No. 115), there appears this:

For the past two years His Majesty's Government have had grave cause to complain on various occasions of unjustifiable interference on the part of the Venezuelan Government with the life and property of British subjects. The successive instances which have occurred since the beginning of last year are set forth in the accompanying memorandum. * * *

Lord Lansdowne is of opinion that the time has arrived when stronger measures must be resorted to for the purpose of bringing the Venezuelan Government to a sense of their *international obligations.* * * *

I am to add that, in conversation with Lord Lansdowne, Count Metternich, the German ambassador, has suggested that the powers concerned should take part in a joint naval demonstration.

In an extract from the dispatch of Minister Haggard to the Marquis of Lansdowne, of date August 1, 1902, he incloses a copy of the note which he addressed to the Venezuelan Government embodying the instructions conveyed to him by his lordship's telegram of 29th ultimo (No. 110), which note Minister Haggard says he took personally to the acting minister for foreign affairs and carefully translated it to him word for word. This note is of date July 30, 1902 (p. 138), and begins by saying that he has been informed—

by His Majesty's Government that they have had under their serious consideration a succession of cases in which the Venezuelan Government have interfered with the property and liberty of British subjects in a wholly unwarrantable manner.

Then follows an enumeration of the incidents and complaints named in No. 108. The communication closes with the following paragraph:

It is not possible, His Majesty's Government consider, to tolerate a continuance of conduct which, in this last incident, reached a climax; and they have consequently instructed me to record a formal protest with reference thereto and to convey to His Excellency the President and to the minister for foreign affairs, in terms about which there can be no mistake, that, unless explicit assurances are received by His Majesty's Government that such incidents shall not occur again, and that full compensation be paid promptly to the injured parties wherever it be shown to the satisfaction of His Majesty's Government that such compensation be justly due, they will take such steps as they may consider to be necessary to exact the reparation which they have the right to demand in these cases, as well as on account of the claims of the British railway companies in Venezuela as also for any loss caused by the conduct of the Venezuelan consul at Trinidad, for which there is no possible justification.

The reply of the Venezuelan Government (No. 123) was, in brief, that they declined discussing these matters unless at the same time the matter of the *Ban Righ* and their claims against Great Britain on account thereof were taken up for consideration.[a]

[a] British Blue Book (Venezuela, No. 1, 1903), p. 139.

The memorandum of the British foreign office communicated to the German ambassador October 22, 1902 (No. 127), opens with the statement that—

> His Majesty's Government have, within the last two years, had grave cause to complain of *unjustifiable interference* on the part of the *Venezuelan Government* with the liberty and property of British subjects.

Among other instances alluded to as supporting this statement is found this—

> It may be mentioned that there are several British railway companies in Venezuela which have large claims against the Government in respect of services rendered, damage done to property by *Government troops*,

but no allusion to losses from revolutionists.

September 1, 1902 (No. 129) the Marquis of Lansdowne is advised by the British minister resident at Caracas of the imprisonment of a British subject, A. Martin Gransaul, at Puerto Cabello by the Venezuelan authorities, and also, on October 22 (No. 130), another dispatch concerning the cutting and maiming of a British subject, John Jones, by the Caracas police.

November 11, 1902 (No. 134), the Marquis of Lansdowne telegraphed Sir M. Herbert, British ambassador to the United States of America, directing him to see Mr. Hay, Secretary of State for that country, and to make him a communication in the following terms:

> His Majesty's Government have, within the last two years, had grave cause to complain of *unjustifiable interference* on the part of the *Venezuelan Government* with the liberty and property of British subjects;

stating, also, that they had sought without result amicable settlement, and that it was felt that a continuance of such conduct could not be tolerated; that they had asked assurances as to the future and reparation for the past, but to no result.

It was on November 13, 1902 (No. 137), that through Count Metternich there was submitted to Great Britain a statement of Germany's claims, and in the first class were placed her claims arising out of the Venezuelan civil war of 1898–1900, amounting to 1,700,000 bolivars approximately. England's first-class claims were the illegal removal and destruction of her merchant ships. In the event of coercive measures becoming necessary the two powers were to make further claims, but there is no reference to acts of revolutionists.

In a communication (No. 140) from the Marquis of Lansdowne to Mr. Buchanan, of date November 17, 1902, concerning a conference had with representatives of the German Government, there is a further statement concerning an agreement with Germany, a recapitulation of the British claims, a reference to coercion if necessary, and then a statement as to the subsequent action of the British Government on receiving the submission of the Venezuelan Government "and on learning that they were prepared to admit their liability on every count." After providing for the immediate payment of the claims in the first class, they—

> would then consent to the heavier claims being referred to a small mixed commission of three members in case the Venezuelan Government should have any considerations to urge in mitigation of the damages claimed. An arrangement of this nature would be equitable as regards the Venezuelan Government, and would, moreover, prevent pressure being exercised in cases, such as might possibly occur, where the Venezuelan member of the commission could prove a claim to be *unfounded* or excessive.

agreement of the national legislative body will take them into consideration and will settle them in accordance with justice. The remaining cases which are not answered in the correspondence depend, as far as they can be considered as constituting claims, on facts which have to be proved or defined, and which the competent authorities will attend to or are attending to. And since your excellency speaks of well-founded claims, it does not appear possible that such cases, in their actual condition or legal position, can have the same character as those which are explained in documents which testify to their character and which give an opportunity of enlightening the judgment or guiding the decision of the body who will consider them. (As translated in Blue Book, p. 188.)

From the one addressed to the chargé d'affaires of the German Empire resident at Caracas (Yellow Book, p. 41)[a] the umpire quotes:

It takes up, as being the only argument of Venezuela against diplomatic intervention in matters of a certain nature, that which was concretely stated in the reply of May 9, in which the whole doctrine set forth in the previous correspondence was passed by, because a repetition of it was deemed unnecessary. And inasmuch as the very highest principles of internaticnal law have precisely been taken for a foundation of the defense of the position of Venezuela presented in the memorandum of March 19, 1901, it was found with extreme surprise that you ascribed to the Government a purpose to consider the question in no other light than that of domestic legislation. When article 20 of the treaty between the Empire and Colombia was cited in the note of May 9 last, it was with no other intention than that of adding supplementary proof to that already adduced in regard to the assent given by Germany to the doctrines upheld by Venezuela.

The three cases now cited as precedents for agreements reached through the diplomatic channel are self-explaining. In 1885 an arrangement was made with France for the payment of allowed claims and the examination of cases dating from much earlier periods; and proof of the fact that the doctrine maintained by Venezuela is therein duly recognized is found in Article V of that convention, whose force has just been fully confirmed. That article inhibits the diplomatic agents of the two contracting parties from intervening in private claims or complaints relating to matters appertaining to civil or criminal justice, unless there should be some denial of justice.

* * * If the claims under discussion are just claims, the Federal Executive, as an honored and civilized power, hastens here and now to give the assurance that those claims will be examined and passed upon as such; and inasmuch as the proper board is already organized, there is no occasion for dilatoriness or the slightest departure from the rules laid down by the law in the conduct of the proceedings. In regard to the other particulars, every one of which comes under its regulating law, I need only call attention to the abnormal circumstances created by the war, which are paralyzing any action on the obligations connected therewith. The Government is considering the appointment of a fiscal agent, who, by entering into direct communication with the interested parties, will help in making the satisfaction of those obligations easier and less protracted. It is only hoped that the work of pacification in which the Government is now deeply and earnestly engaged will enable it to reestablish the service of public credit.

The claims growing out of the war, that is still desolating and devastating a part of the Republic, will share fully in all the rights that are established by the law regulating the matter.

To prevent obscurity and to place before his honored associates and the learned agents of their respective Governments the facts which are within the knowledge of the umpire and which are referred to more or less directly in these ultimata and in the replies thereto, he makes a quick detour to a time antecedent to the correspondence hitherto quoted herein; and, beginning with the matters affecting Germany as indissolubly related to the affairs of the British Government in connection with the question before him, refers first to the written statement of the Venezuelan secretary for foreign affairs, of date August 12, 1902, and found in the "Yellow Book," pages 5–11,[b] in which it appears that the United States of America were officially advised that Germany was contemplating "coercive or comminatory action against the Republic of Venezuela" as early as December 11, 1901, and that their

[a] Appendix, p. 971.

[b] Appendix, pp. 955.

reasons therefor were given at that time and were, as then understood by Venezuela—

based on the refusal of the Venezuelan Government to permit that powers, foreign to the nationals, take part in the examination, classification, or mode of payment of the claims that various German subjects have presented or reserve the right to present for alleged losses or damages sustained during the last wars since 1898. While the text of the memorandum makes unfavorable remarks about the Venezuelan magistrates of the judiciary, whose office it is to pass upon the nature of these claims, it sets forth the resolution of the Imperial Government to present the claims itself, as finally examined, in order that they may be accepted in that form by Venezuela whether willing or not.

In consequence of the above-mentioned publication, the Government of the Republic is now confronted by a document by which it is seriously affected and of whose spirit and tendency it was entirely unaware. * * *

The paper of the German ambassador, once known to Venezuela, can not be allowed to pass without the protest resulting from its contravening maxims of strict equality that international law advocates as a principle of harmony among the states of the civilized world. * * *

The views and arguments advanced by the Republic since the beginning in support of its refusal to accept diplomatic action in the settlement of claims of the Empire have never been refuted, not even incidentally. * * *

In that series of diplomatic notes the Empire rested its case not only on the law of the country, which, as such, gave sufficient force to the argument, but on the best recognized rules of modern international law, on the opinion of eminent European and American writers, on the legislation of other countries, Germany herself, among others, and on the ideas and circumstances which no fair government can ignore when it has to examine claims with due regard to all those concerned. It never was the intent of the Republic, in that correspondence, to impose its will arbitrarily and capriciously, nor did it intend, as the ambassador seems to suppose, to evade sacred obligations in a frivolous manner, but to hold the ground it has stood on since its advent to political life, for natural and judicious reasons. * * *

The Imperial Government, according to the language of the ambassador, wishes to examine and decide for itself and by itself the character, amount, and mode of payment of claims connected with property or interests established in the Republic of Venezuela. The Venezuelan Government, supported by its constitution and the regulations, maintains that such procedure can not be granted to any but the respective national powers. * * *

If by exceptionally waiving the local laws, the matter of claims was allowed to be made one of mere diplomatic action, the simultaneous effect might be a constant injury to the internal sovereignty and a ceaseless threat to the national treasury. * * *

If the class of claims relating to property owned within the territory does not come exclusively under the law of the country, it would behoove the other party to prove it by representing such a statement as would upset all maxims, arguments, and opinions advanced by Venezuela.

This document distributed among the powers closes with a reference to "the organization of the two International Congresses convened on the powerful initiative of the Great Republic of the North," to which attention is here called by the umpire that it may be remembered in connection with what he has to say on the same matter further on in his opinion. Concerning the remaining part of the Yellow Book having reference to the correspondence with Germany beginning in April, 1900, and running on to the close of 1902, the umpire for the sake of brevity calls attention without quoting to the fact that it consists of claims upon the part of Germany covering the losses sustained by the great railroad of Venezuela in connection with the civil war up to the close of 1899; of general-indemnity claims growing out of the same war; of the claim of Venezuela that the decree of January 24, 1900, provided for their ascertainment and liquidation; of the refusal of Germany to allow the said decree to influence in any way its attitude "in regard to claims of German protégés," of its objection in detail to the provisions

of such decree; of a reassertion on the part of Venezuela of the propriety of the decree, and of the judicial validity of the law of February 14, 1873, regarding the manner of preferring claims against the nation; the arguments of Venezuela in favor of its positions on these questions; of a reference to "the celebrated International American Conference of 1889–90 and approval of the principles then enunciated by fifteen delegates there present;" of lengthy quotations from international law writers in supporting Venezuela's contention, and other matters considered relevant and important to the provision of her constitution making equal civil rights for natives and aliens; which positions are proclaimed and adhered to on the one part and denied on the other through a correspondence covering many pages of the Yellow Book. The right of intervention on the part of Germany in behalf of her subjects is distinctly repudiated by Venezuela as being a "judicial impossibility;" "that such intervention is contrary to the *law* of the *country* and *therefore* inadmissible under the international law;" to which the German Government replies that it holds "that national laws which exclude diplomatic intervention are not in harmony with international law, because, according to the view of the powers of the Republic, all intervention of this character could be barred by means of municipal legislation." (See pp. 28, 29, 30, 31 of Yellow Book, May 9, 1902.[a]) This is a communication from the Venezuelan minister of foreign affairs to the chargé d'affaires of the German Empire, closing the correspondence between Germany and Venezuela until the presentation of their ultimatum December 7, 1902, to which reference has already been had.

The British Government, through its minister resident at Caracas, in his communication of April 25, 1901, to the Venezuelan minister for foreign affairs, informs that Government[b]—

that the declaration communicated to the Government of Venezuela by Mr. Middleton, His Majesty's resident minister, in his communication of May 21, 1873, to the effect that His Majesty's Government reserves the right to object to any claim on the part of Venezuela at any future time to having released itself, by its own decree, from responsibility to Great Britain as to the injustice or damages caused to British subjects, for which Venezuela would be bound to give indemnization either by reason of the law of nations in general or by virtue of the provisions of treaties.

To this there is a reply by the Venezuelan minister for foreign affairs, of date May 11, 1901, in which he states in part as follows[c]:

On the other hand, the chief justice believes that no reservation of rights whatever concerning decrees issued in the name of the national sovereignty, and the effects of which include both natives and foreigners, is possible or acceptable. There is no principle of the law of nations, nor any assumption whatever in the stipulation which Venezuela should bear in mind concerning Great Britain, which binds the Government to establish discriminations in the protection of the interests which should be governed by internal legislation.

To the positions here taken the British minister resident at Caracas takes serious exception in his communication of May 13, 1901, asserting that it is in contradiction of the terms of the treaty of 1825, a part of which he quotes, and further on he says[d]:

This constitutes a marked difference which it would have been deemed impossible to deny and which it is impossible to avoid. His Majesty's Government has never admitted, therefore, the contention of the Venezuelan Government, which is of long standing, that the claims of British subjects should be placed on the same footing as those of natives, submitting them to judicial intervention and decision to the exclusion of diplomatic intervention.

---

[a] Appendix, pp. 970.
[b] Appendix, p. 975.
[c] Appendix, p. 975.
[d] Appendix, p. 976.

On May 25, 1901,[a] the Venezuelan minister for foreign affairs answered the communication last above referred to in a long letter reproducing the arguments of Venezuela in favor of her law of 1873, citing authorities in support thereof, citing the statutes and constitutions of Mexico, Guatemala, Salvador, Nicaragua, Honduras, Colombia, Brazil, Ecuador, Peru, the Argentine Republic, and Paraguay upon the same points; and asserts that the thirty years during which the law of 1873 has been upon the statutes adds much to its dignity and force among nations.

December 25, 1901, the British minister resident at Caracas communicates to the Venezuelan minister for foreign affairs the regrets of His Majesty's Government[b]—

that the Government of Venezuela refuses to recognize the reservations of rights made by His Majesty's Government in the question of British claims in the last and previous communications, concerning the right to object to any claim on the part of the Venezuelan Government at any time, of releasing itself, by its own decree, of responsibility with Great Britain with respect to damages or injuries caused to British subjects by which Venezuela would be bound to make indemnization, either in accordance with international law in general or in conformity with treaty obligations. These reservations include also the refusal of His Majesty's Government to recognize any limitation whatever by the national law of its right in accordance with the general principles of international law.

December 16, 1902 (No. 193), there was a communication from the Marquis of Lansdowne to Mr. Buchanan, referring to a conversation had with the German ambassador concerning the Venezuelan proposal for arbitration, in which he informed the German ambassador—

We were, however, inclined to admit that, whilst it was impossible for us to accept arbitration in regard to our claims for compensation in cases where injury had been done to the person and property of British subjects by the *misconduct* of the Venezuelan Government, it was not necessary to exclude the idea of arbitration in reference to claims of a different kind. We had already provided for the reference to a mixed commission.

On December 17, 1902 (No. 194), Count Metternich communicated to the British Government a memorandum which was communicated to the German Reichstag by Count Bülow on December 9, 1902:

By the civil wars which have taken place in Venezuela during the years 1898 to 1900 and again since the end of last year, numerous German merchants and land owners have suffered serious injury, partly through the exaction of forced loans, partly by the appropriation without payment of supplies found in their possession, especially cattle for feeding the troops, and, lastly, by the plundering of their houses and the devastation of their lands. The total of these damages, as regards the civil wars during the years 1898 to 1900, amounts to, roughly, 1,700,000 bolivars (francs), while for the last civil war damages to the extent of, roughly, 3,000,000 bolivars have already been reported. Some of the injured parties have lost almost the whole of their property, and have thereby inflicted loss on their creditors living in Germany.

* * * * * * *

It may be added that the Germans in the latest civil war have been treated in a particularly inimical manner. The acts of violence, for instance which were committed by the Government troops when they plundered Barquisimeto, were principally committed at the expense of German houses. This attitude of the Venezuelan authorities would, if not punished, create the impression that Germans in Venezuela were abandoned without protection to the arbitrary will of foreigners, and would be calculated seriously to detract from the prestige of the Empire in Central and South America, and be detrimental to the large German interests which have to be protected in those regions.

It is also here stated that the claim on behalf of the Great Venezuelan Railway, a German enterprise, equals about £300,000.

---

[a] Appendix, p. 976.

[b] Appendix, p. 979.

Count Metternich, in forwarding this memorandum to the British Government "points out that the German claims are not only pecuniary, but also based *on the ill treatment* of Germans by *the Venezuelan authorities.*"

This defines and limits the meaning of the claim arising from the civil wars spoken of by the Germans in this connection and elsewhere, and is conclusive in its exclusion of all acts of revolutionaries from the claims and demands contained in its ultimatum submitted to the Venezuelan Government December 7, 1902.

It was on December 17 that the Marquis of Lansdowne informed Sir Michael Herbert, at Washington, that—

> the American chargé d'affaires told me to-day that he had received instructions to inform me that the Venezuelan Government now earnestly wished for arbitration, which, in the opinion of the United States Government, seemed to afford a most desirable solution of *the questions in dispute.*

On December 18, 1902, the Marquis of Lansdowne informed Sir M. Herbert at Washington that he had that afternoon informed the United States chargé d'affaires that the cabinet had decided to accept *in principle* the idea of settling the Venezuelan dispute by arbitration and that the German Government was in accord.

It was on December 18, 1902 (No. 199), that the Marquis of Lansdowne communicated to Sir F. Lascelles that the German ambassador had that day informed him of his Government's agreement with Great Britain as to its treatment of the Venezuelan proposal for arbitration, but that his Government desired to make certain reservations similar to what had been previously suggested, and these reservations were submitted in a written memorandum. Paragraph 2 contains the following:

> All further demands *contained in* the *two ultimatums* shall be submitted to the proposed court of arbitration. The latter will therefore have to consider not only the claims in connection with the present Venezuelan civil war, but also, as far as Germany is concerned, the demands mentioned in the memorandum laid before the Reichstag of German subjects arising from the nonfulfillment of liabilities incurred by contract by the Venezuelan Government. The court of arbitration will have to decide both *on the material* justification of the demands and on the ways and means of their settlement and security.

There is added:

> The Government of the United States of America would be conferring an obligation on us if, by exerting their influence over the Venezuelan Government, they could succeed in persuading the latter to accept these proposals.
>
> * * * * * * *
>
> I told his excellency that I would communicate his statement to the cabinet, which was to meet in the afternoon, and that I had little doubt that, in principle, the two Governments would be found to entertain similar views.
>
> I was able, later in the afternoon, to inform his excellency that the cabinet agreed to arbitration as a means of settling the dispute, subject to the following reservations, which he undertook to communicate to the German Government:
>
> 1. The shipping claims are not to be referred to arbitration.
> 2. In cases where the claim is for injury to, or wrongful seizure of, property, the questions which the arbitrators will have to decide will only be—
>
> (a) Whether the injury took place and whether the seizure was wrongful; and
>
> (b) If so, what amount of compensation is due. That in such cases a liability exists must be admitted in principle.

On December 22, 1902, the Marquis of Lansdowne sent to Sir F. Lascelles a copy (inclosure in No. 207), received from Count Metternich, of the reply which the German Government returned to the proposals made by Venezuela through the United States Government,

from which reply certain extracts are here made. There were reserved from arbitration claims—

which originated in the Venezuelan civil wars from 1898 to 1900, and of which details are given in the inclosed memorandum of the *8th December, which was communicated to the Reichstag.* It will be seen that they consist of claims on account of *acts of violence on the part of the Venezuelan Government or their agents.* * * *

All other claims which have been put forward in the *two ultimata* could be submitted to the arbitrator.

The arbitrator will have to decide both about the *intrinsic justification* of *each separate claim*, etc.

In the case of claims in connection with damage done to, or unjustifiable seizure of property, the Venezuelan Government will have to recognize their liability in principle, so that the question of liability will not form the subject of arbitration, but the arbitrator will be concerned solely in the questions of the *illegality* of the *damage* or *seizure.* * * *

The Government of the United States of America would be conferring an obligation on the *Imperial* and *British* Governments if, by exerting their influence over the Venezuelan Government, they could succeed in persuading the latter to accept *these* proposals.

Memorandum communicated to Ambassador White December 23, 1902 (No. 209), stated among other matters that—

His Majesty's Government have in consultation with the German Government taken into their careful consideration the proposal communicated by the United States Government at the instance of that of Venezuela. * * *

His Majesty's Government have, moreover, already agreed that in the event of the Venezuelan Government making a declaration that they will recognize, *the principle of the justice* of the British claims, etc.

January 1, 1903, Ambassador White inclosed to the Marquis of Lansdowne a copy of a telegram, via Secretary Hay, from Minister Bowen, in which there is a signed communication from President Castro, and in which appears—

I recognize, in principle, *the claims which the allied powers have presented to Venezuela.*

Neither the British nor the German Governments were satisfied with this telegram of President Castro, and both insisted on an unreserved acceptance of conditions 1, 2, and 3, which were communicated to Ambassador White December 23, 1902, and on January 5, 1903 (No. 222), the Marquis of Lansdowne communicated to Ambassador White what President Castro's recognition "in principle" meant as understood by His Majesty's Government, and in that connection made a restatement of those conditions and required of President Castro a definite acceptance thereof, which was given of date January 9, 1903, through Mr. Bowen (No. 226), in the language following:

The Venezuelan Government accepts the conditions of Great Britain and Germany.

And the conditions which were thus presented so far as they affect the question now before the umpire, as he understands, were that Venezuela "will recognize the *principle* of the *justice* of the British claims."

Mr. Bowen telegraphs from Caracas to Mr. Hay, January 6, 1903 (Bowen's Pamphlet, p. 9),[a] among other things, that President Castro asserts—

that the claims against him are purely commercial in character; that he acknowledges that he must pay *such of them as are just.*

In the agreement which Mr. Bowen, representing Venezuela, signed January 27, 1903 (Bowen's Pamphlet, p. 15),[b] in regard to the 30 per

[a] Appendix, p. 1035. [b] Appendix, p. 1039.

cent of the total income of the ports of La Guaira and Puerto Cabello, communicated by telegram from Ambassador Herbert to the Marquis of Lansdowne, there appears a statement very significant as to his understanding of the claims to which Venezuela was obliged to respond, viz:

I hereby agree that Venezuela will pay 30 per cent of the total income of the ports of La Guaira and Puerto Cabello to the nations that have claims against her, and it is distinctly understood that the said 30 per cent will be given exclusively *to meet the claims mentioned* in the *recent ultimatums* of the *allied powers* and the unsettled claims of other nations that existed when said ultimatums were presented.

On January 23, 1903 (Bowen's Pamphlet, p. 12),[a] Sir Michael Herbert, at Washington, communicated to Mr. Bowen the demands of the British Government, so far as they referred to the claims included in Article III of the protocol, in the following language:

2. Other claims for compensation, including railway claims and those for injury or wrongful seizure of property, must be met by an immediate payment to His Majesty's Government or by a guaranty adequate to secure them. These claims can be, if desired, examined by a mixed commission.

These conditions were accepted by Mr. Bowen by a note of the same date.

January 24, 1903 (Bowen's Pamphlet, p. 14),[b] the imperial chargé d'affaires at Washington submitted a document to Mr. Bowen concerning the claims of Germany against Venezuela, and in Article II thereof says:

All the other claims which have already been brought to the knowledge of the Venezuelan Government in the *ultimatum* delivered by the imperial minister resident at Caracas, i. e., claims resulting from the present civil war, further claims resulting from the construction of the slaughterhouse at Caracas, as well as the claims of the German Great Venezuelan Railroad for the nonpayment of the guaranteed interest, are to be submitted to a mixed commission should an immediate settlement not be possible.

III. The said commission will have to decide both about the fact whether said claims are materially founded and about the manner in which they will have to be settled or which guaranty will have to be offered for their settlement. Inasmuch as these claims result from damages inflicted on property or the illegal seizure of such property, the Venezuelan Government has to acknowledge its liability in principle, so that such liability in itself will not be an object of arbitration, and the decision of the commission will *only* extend to the *question* whether the *inflicting* of *damages* or the *seizure* of such *property was illegal.* The commission will also have to fix the amount of indemnity.

February 5, 1903, the Marquis of Lansdowne cabled Sir Michael Herbert, ambassador, in part as follows:

A separate telegram is being sent to you which contains the draft of a protocol *embodying the conditions which have already been accepted by Mr. Bowen.*

Article III of the protocol thus submitted and Article III of the protocol of February 13 are identical. The language is every word the language of the claimant Government, and it was asserted by that Government (No. 263) to contain nothing not accepted by Mr. Bowen prior to February 5, 1903. What these agreements were has been set out here in substance.

From a careful reading of all the correspondence and conferences between the two allied powers and Venezuela, beginning in April, 1900, and continuing up to and including February 13, 1903, and which appear in the Yellow Book and the Blue Book, and in all the correspondence or conferences appearing in those two books and Mr. Bowen's

[a] Appendix, p. 1037. [b] Appendix, p. 1037.

pamphlet relating to the correspondence and conferences between him as the representative of Venezuela and the three war powers, Great Britain, Germany, and Italy, and in all the correspondence and conferences appearing in either of these documents in which the United States of America had a part, the umpire fails to find a sentence, a word, or a syllable suggestive of a claim by either of these three powers that Venezuela should respond in damages or be held to indemnities because of the acts of insurgents. On the contrary, Germany had stated their claims to be based on "acts of violence on the part of the Venezuelan Government or their agents," and the statements of Great Britain were not opposed, but wholly consistent therewith.

The high contracting parties knew during the negotiation, and at the conclusion thereof when the protocols of February 13 were signed, that Germany had declared in the most formal and explicit manner, on an occasion not remote and in circumstances of the State not dissimilar, her view of equity and justice concerning the liability of governments for the acts of revolutionaries. This appears in her treaty with Colombia in 1892, where is laid down her view of law, justice, and equity in these words:

> It is also stipulated between the contracting parties that the German Government will not attempt to hold the Colombian Government responsible, unless there be due want of diligence on the part of the Colombian authorities or their agents, for the injuries, vexations, or exactions occasioned in time of insurrection or civil war to German subjects in the territory of Colombia, through rebels, or caused by savage tribes beyond the control of the Government. (Art. 20, sec. 3.)

Italy, the other war power, up to the time of signing the protocol of February 7, 1903, by her treaty with Venezuela in 1861 was bound to treat such matters reciprocally, as appears in the language following:

> In cases of revolution or of interior war the citizens and subjects of the contracting parties will, in the territory of the other, have the right of being indemnified for damages and losses which may be caused to their persons or property by the constituted authorities of the country on the same terms as the nationals would have a right to indemnification according to the laws which prevail in such country. (Art. 4.)

And she had deliberately restated her position on such questions under conditions not dissimilar to those of Venezuela in her treaty with Colombia in 1892, as follows:

> It is also stipulated between the two contracting parties that the Italian Government will not hold the Colombian Government responsible, save in the case of *proven* want of due diligence on the part of the Colombian authorities or of their agents, for injuries occasioned in time of insurrection or civil war, to Italian citizens in the territory of Colombia, through the acts of rebels, or caused by savage tribes beyond the control of the Government. (Art. 21, sec. 3.)

Great Britain had a historical attitude of a similar character on this question, which she had applied in the case of the United States of America in 1861–1865 (see Hall, p. 232), and again not many years since to a country no more well ordered than Venezuela, namely, to Colombia, in 1885, when a British subject was injured by the burning of Colon, Colombia, and sought the aid of his Government for reparation from Colombia. Under instructions from the British foreign office, the English minister resident stated that the destruction of Colon was due solely to the revolutionists, and that when these events took place "the Government of Colombia was entirely unable to prevent them, even though it afterwards accidentally succeeded in putting down the rebellion." And from these facts it was thought it could not be asserted

that his injury "was directly due to the fault of the Colombian Government to the extent of justifying a demand for redress in behalf of those English subjects who, like yourself, have unfortunately suffered losses by reason of the fire." And the conclusion of the matter was that, under instructions of the prime minister, he was informed by the English minister: "I am unable to support your claims against the Government of Colombia." (U. S.-Vene. Claims Commission, convention of 1892, p. 585.)

The umpire desires to call attention specifically to the general attitude of the South American and Central American republics relating to the right of the state by constitutional provision and municipal legislation to cut off the right of the government of the injured citizen to intervene to demand attention to injuries received by their subjects in property and person, who maintain, some of them, that in virtue of such legislation no diplomatic claim can exist, and if one is submitted to an arbitral tribunal a judgment of dismissal must be entered. He assumes, rightfully he believes, that all governments concerned in the matter of which we are now inquiring were fully informed and thoroughly advised concerning the legislation and the attitude to which the umpire refers. That they knew that at the time these protocols were drawn opinions irreconcilable with theirs were held by a very large part of the South American and Central American republics; that these opinions were strengthening rather than abating; that they had taken form in national constitutions and statutes, and in proposed treaties and international agreements.

They knew that at the Pan-American Conference of 1889-90, in a majority report of its committee on international law, among other things it was declared "that foreigners are entitled to enjoy all the civil rights enjoyed by natives, and to all substantive and remedial rights in the same manner as natives," and "that a nation has not, nor recognizes in favor of foreigners, any other obligation or responsibilities than those which are established in like cases in favor of the natives by the constitution and laws." That it was there recommended that these resolutions be adopted as "principles of American international law." They knew these principles there propounded were in sharp and rugged conflict with the law of nations as understood and accepted by Europe and the United States of America. They knew that at the Pan-American Conference held in the City of Mexico in 1901 the delegates representing fifteen of the twenty states which were there assembled reaffirmed the propositions of 1889 and declared again and emphatically that the states do not recognize in favor of foreigners any obligations or responsibilities other than those established by their constitutions and laws in favor of their own citizens, and that the states are not responsible for damages sustained by aliens originating from acts of war, whether civil or national, "except in case of failure on the part of the constituted authorities." From this deliverance both knew that if the constitution and laws of the given state gave no remedies, or illusive ones, to natives for the wrongful seizure of or injury to property, it would be claimed and urged that foreigners must accept the consequences; and that also where the property of aliens had been seized and confiscated for military use by the military powers of the government there was no compensation therefor, regardless of the constitution or laws of the particular state, and in direct contravention to the generally accepted law of nations applicable thereto.

They knew that there were several treaties projected at this conference all more or less at war with international law as held by Europe; that one country urged a treaty declaring as one of its provisions that "in all cases where a foreigner has claims or complaints of a civil order, criminal or administrative, against a state, no matter what the ground of his allegations may be, he must address his complaint to the proper judicial authority of the state, without being entitled to claim the diplomatic support of the government of the country to which he belongs to enforce his pretensions, but only when justice shall have failed, or when the principles of international law shall have been violated by the court which took cognizance of the claim;" that "in every case where a foreigner has claims or complaints of a civil, criminal, or administrative order he shall file his claim with the ordinary courts of such state;" that no government should "officially support any of those claims which must be brought before a court of the country against which the claim is made, except cases in which the court has shown a denial of justice or extraordinary delay or evident violation of the principles of international law." They knew that to establish such a principle of action would prevent any government from intervention in any case until there had been an exhaustion of all legal remedies and a palpable denial of justice; and that concerning this it was provided that "a denial of justice exists only in case the court rejects the claim on the ground of the nationality of the claimant." A second country would establish an "international court of equity;" but provided that the claimant must first exhaust all legal remedies before the courts of the defendant state where the nature of the claim permitted it to be adjusted by such courts.

They knew that at this conference it was proposed by three of the States in conference that a treaty should be made declaring that the responsibility of the state to foreigners is not greater than that assured to natives; that the government should not entertain diplomatically any demand of a citizen in a foreign country where the claim arises out of a contract entered into between the authorities and the foreigner, or where it has been expressly stipulated in the contract that the government of the foreigner shall not interfere; that the government of a foreigner shall not interfere to support his complaint or claim originating in any civil, penal, or administrative affairs, except for denial or undue delay of justice, or for nonexecution of a final judgment of the courts, or when it is shown that all legal remedies have been exhausted, resulting in a violation of express treaty right, or of the precepts of public or private international law "*universally recognized by civilized nations.*" They knew that the words in quote, if agreed to, prevented any intervention, because of the fact that one of the South American states had by statute declared that no judgment rendered against a foreigner could be held as unjust or a denial of justice, even though the decision was iniquitous and against express law. They knew that the South American and Central American republics, with few, if any, exceptions, were permeated through and through with the seductive doctrines of Calvo, the distinguished Argentine publicist, the fundamental idea of which is that no government may rightfully intervene in aid of its citizens in another country, and that this fundamental doctrine to a greater or less extent had been brought into constitutions and statutes of the different states. They knew that in the

constitution of Venezuela, Title III, Section I, article 14, there was to be found this provision, namely:

Foreigners will enjoy all civil rights which are enjoyed by nationals, but the nation does not hold or recognize in favor of foreigners any other obligations or responsibilities than those which have been established in a similar case in the constitution and in the laws in favor of nationals.

And that in paragraph 2, article 14, there is to be found this:

In no case may either nationals or foreigners pretend that either nation or states shall indemnify them for damages, prejudices, or expropriations which have not been executed by legitimate authority operating in its public character.

They knew of the Venezuelan law of March 6, 1854, concerning indemnity to foreigners, and the decree of Guzmán Blanco of date February 14, 1873, and that it was protested against by many, if not all, of the leading nations of Europe and by the United States of America; that notwithstanding these protests it was republished by order of President Castro January 24, 1901, and that, as republished, it required "all who bring claims against the nation, whether nationals or foreigners, by reason of *damages* and *injuries* and *seizures* by acts of national employees or of the states, whether in civil or international war, or in time of peace, will bring them" before the high federal court under the rules of procedure laid down in articles 3, 4, 5, and 6 of the decree; that article 8 of the decree provided "that whoever appears in a manifest manner to have exaggerated the amount of the injuries he may have suffered will lose his right to recover and be subject to fine or imprisonment, and if it be altogether false will be mulcted in a fine or sent to prison;" that article 9 of the decree provided "that in no case shall the nation or the state indemnify for losses, *damages*, or *injuries*, or *seizures* which have not been executed by legitimate authorities working in their public character;" that article 10 set a limitation of two years on all actions permissible under the law; that article 11 declared "that all who without public character decree contributions or forced loans or spoliations of any nature, as well as those who execute them, will be directly and personally responsible with their goods for whomever may be prejudiced;" that article 13 repealed the law of March 8, 1854, relating to indemnities above referred to. They knew that President Castro issued an order January 24, 1901, creating a junta to examine and determine the damages claimed by nationals and foreigners against the nation on account of the war initiated May 23, 1899, and limiting the time within which claimants must appear to *three months* from the date of the order, and otherwise their demands were to receive no attention "unless the delay be shown to be occasioned by a superior force." They knew that there was a law of the same date bearing the approval of President Castro, one article of which defined the losses which might be sustained before said junta, namely:

Losses during the war to private property *not* proceeding from hostile acts for which no one is responsible, nor for the licentious conduct of soldiers who have taken advantage of moments of contention, unless they have been made voluntarily, intentionally, and deliberately by order of superior power in charge of belligerent operation.

They knew that article 140 of the Venezuelan constitution contained this important declaration:

International law is *supplementary* to national legislation; but it can never be invoked against the provisions of this constitution and the individual rights which it guarantees.

They knew that such laws and constitution were based on the principle of the duty of nationals and aliens to obey the laws of the land wherein they dwell; that there was no injury to person or property unless incurred in violation of the national law; that there was no remedy save in manner and means as provided by that national law; that the alien had no recourse to the country of which he was a subject except for the causes recognized by such national law; that the nation whose subject he is has no right of intervention, except for causes prescribed by the law of the nation where he is commorant or domiciled; that all this is a right of each nation to prescribe, and of each alien within its domains scrupulously to obey, and of each mother country to respect, regard, and by it to be controlled; that international law may aid, but can never control, dictate, or determine any matter which is in conflict with its own statute law and the national interpretation thereof; that whereas the generally accepted idea of Europe and the United States of America is the supremacy of international law in international matters, Venezuela and many of the other states of South and Central America of kindred thought maintain the supremacy of their own laws in international matters. They knew that before mixed commissions jurisdictional questions were always possible and might be frequent, and that unrestricted by express agreement Venezuela was bound by her laws, organic and other, to interpose objections jurisdictional to every claim not of the class recognized as proper subject-matter of international intervention by her constitution and her laws; that with unrestricted submission, among others, these questions could always be raised, namely:

I. That every claim by an alien for damages and injuries to property and of seizures thereof by national or state employees in time of peace or during the civil wars would be objected to as not within the jurisdiction of the mixed commissions until it had been heard before the junta provided and there had been a clear denial of justice.

II. That in all cases of losses, damages, or injuries to persons or property or seizure of the latter, not executed or caused by the legitimate authorities working in their public character, there would have been a denial of all liability in any manner at any time.

III. That in all cases otherwise admissible under the laws if the claim had run two years before presentation it was barred by their statutes.

IV. That if contributions or forced loans or spoliation had been decreed or caused by any one or more who were not of the public character required, the party injured had only his remedy against him or them who had caused the loss or injury.

V. That in cases arising on account of the war of 1899 there would be, also, the claim that no case was within the jurisdiction, because of the time limit of three months, except on proof that there had been the exception provided in connection therewith.

VI. That losses to property during that war which might escape the other objections would be met with the contention that such losses must not proceed from hostile acts for which no one is responsible, nor from the licentious conduct of soldiers who have taken advantage of moments of contention, nor are they recoverable unless they have been made voluntarily, intentionally, and deliberately by order of superior power in charge of belligerent operations.

For an agreement to arbitrate among nations, as among individuals, is simply a submission of all matters in dispute within the limits named, and there would be jurisdiction, law, equity, and fact as applied to each case. The admission of liability in the protocols prevented the raising of these objections. They knew that these objections, which the umpire has stated as not only possible but probable, had been, in fact, as a whole or in part during the correspondence interposed by Venezuela against the claims of Great Britain and Germany, who together agreed upon the formula in question. (See Yellow Book, pp. 16, 50, 59, and 65.[a])

The umpire assumes that these important treaties were not made without great care and deliberation commensurate to their importance and by officials who were thoroughly and conscientiously able and apt to perform their high functions. In the Supreme Court of the United States of America, in the matter of the *Nereide* (9 Cranch, 419), Chief Justice Marshall says:

> Treaties are formed upon deliberate reflection. Diplomatic men read the public treaties made by other nations and can not be supposed either to omit or insert an article, common in public treaties, without being aware of the effect of such omission or insertion.

The umpire feels confident that the careful review and partial rehearsal of the conditions existing at the time of making these two protocols will convince the most skeptical that the inclusion of the clause in question is not meaningless if its interpretation is established in accordance with the previously expressed opinion in the de Lemos[b] and Crossman[c] cases, and that to so hold leads to an absurd conclusion.

But there are parallel or corollary provisions in the second protocol which in the judgment of the umpire rest upon the same and no other grounds.

> The commissioners, or in case of their disagreement the umpire, shall decide all claims upon a basis of absolute equity without regard to *objections of a technical nature or of provisions of local legislation.*

By a proper application of the usually accepted international law governing such commissions, controlling courts, and defining the diplomatic conduct of nations there could be no question that national laws must yield to the law of nations if there was a conflict.

> As a general rule municipal statutes expanding or contracting the law of nations have no extraterritorial effect. (Wharton, vol. 3, sec. 403, p. 652, Digest.)
>
> We hold that the international duty of the Queen's Government in this respect was above and independent of the municipal laws of England. It was a sovereign duty attaching to Great Britain as a sovereign power. The municipal law was but a means of repressing or punishing individual wrongdoers; the law of nations was the true and proper rule of duty for the Government. If the municipal laws were defective, that was a domestic inconvenience, of concern only to the local government, and for it to remedy or not by suitable legislation as it pleased. But no sovereign power can rightfully plead the defects of its own domestic penal statutes as justification or extenuation of an international wrong to another sovereign power. (Mr. Fish, Sec. of State, to Mr. Motley, Sept. 25, 1869; Wharton's Digest, vol. 3, sec. 403, p. 653.)
>
> This position was sustained by the eminent jurists forming the Geneva arbitral tribunal. (See Wharton, vol. 3, sec. 402*a*, p. 645, Digest.)
>
> The effect of the Salvadorean statute in question is to invest the officials of that Government with sole discretion and exclusive authority to determine conclusively all questions of American citizenship within their territory. This is in contravention of treaty right and the rules of international law and usage and would be an abnegation of its sovereign duty toward its citizens in foreign lands, to which this Government has never given consent.

---

[a] Appendix, pp. 959, 975, 979, 982. [b] Page 310. [c] Pages 298, 306.

Articles 39, 40, and 41, Chapter IV, of the law in question, purport to define the conditions under which diplomatic intervention is permitted on behalf of foreigners in Salvador whose national character is admitted. I regret that the Department is unable to accept the *principle* of any of these articles without important qualifications. (Mr. Bayard, Sec. of State, to Mr. Hall, Nov. 29, 1886. Wharton, vol. 3, Appendix, sec. 172*a*, p. 960.)

It is a settled principle of international law that a sovereign can not be permitted to set up one of his own municipal laws as a bar to a claim by a foreign sovereign for a wrong done to the latter's subjects. (Wharton, vol. 3, Appendix, sec. 238, p. 969.)

Similarly in Wharton, volume 3, Appendix, section 403, page 991.

In Phillimore, volume 1, Chapter II, Section CXVII, it is said:

Under the rights incident to the equity of states as a member of an universal community is placed "the right of a state to afford protection to her lawful subjects wheresoever commorant," and under this head may be considered the question of debts due from the government of a state to the subjects of another state.

The definition of international law, making it under one form of expression and another the rules which determine the general body of civilized states in their dealings with one another, necessarily excludes state statutes from doing the same thing.

They [aliens] are again, as we have seen, entitled to protection, and failure to secure this, or any act of oppression may be a ground of complaint, or retorsion, or even of war, on the part of their native country. (Woolsey's Intro. to Int. Law, p. 90, sec. 66.)

(See Hall, Int. Law, Chap. II; also Chap. VII, sec. 87.)

The right of states to give protection to their subjects abroad, to obtain redress for them, to intervene in their behalf in a proper case, which generally accepted public law always maintains, makes these municipal statutes under discussion in direct contravention thereto and therefore inadmissible principles by those states who hold to these general rules of international law.

A government has a right not only to exercise jurisdiction over all persons within its territory, but also to see to the good treatment of its subjects when in the territory of a foreign power, and generally that they sustain no injury. (Holland's Studies on Int. Law, p. 160.)

It is not, I think, to be presumed that the British Parliament could intend to legislate as to the rights and liabilities of foreigners. (4 K. & J., p. 367.)

In Healthfield *v.* Chilton (4 Burr, 2016) Lord Mansfield held that the act of 7 Anne, c. 12, "did not intend to alter, *nor can alter*, the law of nations."

As "the law of nations" it is, of course, insusceptible of modification by an act of the British Parliament. The act "can neither bestow upon this country any international right to which it would not otherwise be entitled, nor relieve our Government from any of its diplomatic responsibilities." (Holland's Studies in Int. Law, p. 195; 3 Phillimore's Int. Law, p. 387.)

It is, on the other hand, quite certain that no act of Parliament, or decision given in accordance with its provisions, will relieve this country from liability for any results of the act, or decision, which may be injurious to the rights of other countries. (Holland's Studies in Int. Law, p. 199.)

Referring to Venezuelan municipal laws by which they then sought to obviate their international responsibility for the acts of turbulent factions or armed insurgents, Secretary of State Fish says: "To assume, therefore, to dictate that no claim for such losses shall ever be made may be said to be arrogant to a degree likely to be offensive to most governments having relations with a republic so subject to sudden and violent changes in its authorities.

"Upon the whole, the enactments adverted to may be regarded as superfluous in their substance, and in their form by no means adapted to foster confidence in the good will of that government towards foreigners who may resort to Venezuela." (See U. S.-Vene. Claims Com., Convention of 1892, p. 520.)

Municipal variations of the law of nations have no extraterritorial effect. (The *Resolution*, 2 Dall., 1; the *Nereide*, 9 Cranch, p. 389.)

The municipal laws of one nation do not extend, in their operation, beyond its own territory, except as regards its own citizens or subjects. (The *Apollon*, 9 Wheaton, p. 362.)

Recurring then to the proposition made when the umpire referred to this part of the second protocol, there seems to be adequate reason for this unusual provision only in the fact that the respondent government held that its laws were paramount in such matters and would be expected to contend in behalf of its carefully conceived and tenaciously supported theory before the Mixed Commission, and to prevent such contention and to prevent the possibility of a successful contention this clause was inserted. A commission not in terms bound to follow the law of nations might go astray over such a question if unrestricted, and hence the restriction. But it is, equally with the other proposition, open to the objection that, being in accord with public law, it had no place if there were not some reason for its existence—if it did not contain some rule to govern this Commission either not to be found in the precepts of international law or directly opposed to it.

Again, there is the reservation concerning technical objections. The course of commissions has rarely strayed from equity and justice by a too close adherence to technical objections, but there have been frequent interruptions and costly delays because of such objections, and the astute and able lawyers of Venezuela had on several occasions shown their capacity to raise fine distinctions in fact and law, resulting in long and eventually valueless discussion. The claimant Government had known from experience how forcefully such objections could be raised. It proposed to end that trouble at the beginning. Hence the provision:

> They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the Governments, respectively, in support of or in answer to any claim.

And yet it had not been the practice of commissions in times past—and it is not required by law writers—that there be a strict compliance with the general requirements concerning evidence. But there had been much annoyance and many serious interruptions of the business of commissions and occasional refusal to consider a case because of assumed lack of evidential quality in the proof offered, and hence the provision. Yet neither of these last two provisions were new or novel or opposed to the ordinary practice of commissions or the generally varied rules of public law, but they did represent the views of the claimant Government on those matters, and if inwritten were safe and wise precautions against probable delays, and possible friction, misconception, and misdirection of the tribunal. The law on these points was well laid down by the eminent scholar, diplomat, and jurist, Judge J. C. Bancroft Davis, in the Caldera case, 15 Court of Claims Reports (U. S. A.), 546:[a]

> In the means by which justice is to be attained, the court is freed from the technical rules of evidence imposed by the common law, and is permitted to ascertain truth by any method which produces *moral conviction*.
>
> In its wider and universal sense it [evidence] embraces all means by which any alleged fact, the truth of which is submitted to examination, may be established or disproved. (1 Greenleaf Ev., sec. 1.)
>
> International tribunals are not bound by local restraints. They always exercise great latitude in such matters (Meade's case, 2 Court of Claims, U. S. A., 271), and give to affidavits, and sometimes even to unverified statements, the force of depositions.

The umpire desires it to be distinctly understood once for all that he accepts the statement of the learned British agent that his Govern-

[a] Dissenting opinion, p. 606.

ment thought the terms of the protocol broad enough to include all injuries and all wrongful seizures, whether caused by Venezuelan authorities or by insurgents. This statement of his is not questioned directly or indirectly; but he does not say, and it has not been said, that there were not also in the mind of his Government in all of these provisions the protective and restrictive features here suggested. As a matter of fact, these are the plain, obvious, and reasonable grounds for their insertion, and there is not the slightest evidence which the umpire has been able to find that Venezuela knew of any other, thought of any other, or consented to any other grounds or reasons. This is the important question, for when there is found that which Venezuela or her representatives understood and consented to and understood that they consented to then there is found all there is of the treaty.

The position of all international law writers was in substantial accord touching this matter of nonresponsibility of nations for the acts of unsuccessful revolutionists at the time this protocol was signed, as was well known to the parties to the protocols in question.

The sovereign is responsible to alien residents for injuries they receive in his territories from belligerent action, or from insurgents whom he could control or whom the claimant government has not recognized as belligerents.

The umpire will rest his quotations from text writers upon Hall on International Law, pages 231–232, where the law is laid down in the language which follows:

> When a government is temporarily unable to control the acts of private persons within its dominions, owing to insurrection or civil commotion, it is not responsible for injury which may be received by foreign subjects in their person or property in the course of the struggle, either through the measures which it may be obliged to take for the recovery of its authority or through acts done by the part of the population which has broken loose from control. When strangers enter a state they must be prepared for the risks of intestine war, because the occurrence is one over which, from the nature of the case, the government can have no control; and they can not demand compensation for losses or injuries received, both because unless it can be shown that a state is not reasonably well ordered, it is not bound to do more for foreigners than for its own subjects, and no government compensates its subjects for losses or injuries suffered in the course of civil commotions, and because the highest interests of the state itself are too deeply involved in the avoidance of such commotions to allow the supposition to be entertained that they have been caused by carelessness on its part, which would affect it with responsibility toward a foreign state.

In the opinion of Umpire Ralston, in the matter of Salvatore Sambiaggio *v.* Venezuela,[a] before the Italian-Venezuelan Mixed Claims Commission, now sitting in Caracas, there is a valuable collocation of authorities upon this point, to which opinion and the authorities there cited the umpire is pleased to make reference, and, to quote the conclusions of Ralston, umpire, found on pages 2 and 3 of his typewritten opinion:[b]

> We find ourselves, therefore, obliged to conclude from the standpoint of general principle that, save under the exceptional circumstances indicated, the Government should not be held responsible for the acts of revolutionists, because—
>
> 1. Revolutionists are not the agents of government, and a natural responsibility does not exist.
>
> 2. Their acts are committed to destroy the government, and no one should be held responsible for the acts of an enemy attempting his life.
>
> 3. The revolutionists were beyond governmental control, and the Government can not be held responsible for injuries committed by those who have escaped its restraint.

---

[a] Page 666.

[b] Page 680.

Held by Duffield, umpire in the German-Venezuelan Mixed Claims Commission, late sitting at Caracas:

> That the late civil war in Venezuela from its onset "went beyond the power of the Government to control. * * * Under such circumstances it would be contrary to established principles of international law, and to justice and equity, to hold the Government responsible." (Claim of Otto Kummerow *v.* Venezuela.[a])

The precedents form an unbroken line, so far as the umpire has been favored with a chance to study them, supporting the usual nonresponsibility of governments for the acts of unsuccessful rebels. It was so held by the eminent Sir Edward Thornton in all cases which he decided as umpire in the United States-Mexican Commission. (Moore, vol. 3, pp. 2977–2980.) So held by the United States-Spanish Commission of 1871. (Moore, vol. 3, pp. 2981–2982.) So held by the United States and British Claims Commission of 1871. (Moore, vol. 3, pp. 2982–2987, 2989.) So held by the United States and Mexican Claims Commission of 1859. (Moore, vol. 3, pp. 2972.) So held in principle by the United States and Mexican Claims Commission of 1868. (Moore, vol. 3, pp. 2900, 2902, 2973.) So held concerning the nonresponsibility of the United States in the civil war of 1861. (Moore, vol. 3, 2900–2901.) So held in substance and effect by the United States-Venezuelan Mixed Commission now sitting at Caracas.[b] Even the cases which were claimed to qualify or oppose this rule and were not specifically attacked by the umpire in the Sambiaggio case above referred to are not opposed to the rule laid down when all of the facts appear.

In the Easton case, before the Peruvian Claims Commission,[c] careful investigation discloses that the Government of Peru had acknowledged that it was liable, in fact and law, to pay the actual loss, and had tendered $5,000 in satisfaction thereof; so that the Commission had before it only the question of amount.

In the case of the Venezuelan Steam Transportation Company against Venezuela there were presented peculiar conditions, in that a part of the damage was inflicted by the "Blues" and part by the "Yellows." The "Blues" was the de jure government which had been driven from Caracas by the "Yellows," but retained authority and control over certain States, among them the State lying on the west of the Orinoco near Ciudad Bolivar, and, during the happening of a great part of the injuries complained of, were in control of the State of which Ciudad Bolivar is the capital. The "Yellows," being in possession of the national capital, were recognized as the de facto government. Mr. Evarts, Secretary of State for the United States of America, a very eminent lawyer, held that—

> there seems to be just as good ground for taking the organization of the party of the "Blues," so called, as the legitimate government at that time as the forces and managers of the party of the "Yellows." (U. S.-Vene. Claims Commission, 1892, pp. 516–517.)

For injuries inflicted by the "Yellows" the agent of the claimant government asked for damages several times in excess of the entire amount of the award given. Much of the damage claimed as inflicted by the "Blues" was placed upon the de facto Government, the "Yellows," by said agent on the ground of lack of diligence in permitting the "Blues" to remain so long at Ciudad Bolívar and in control of the

---

[a] Page 559. [b] Page 35. [c] Moore, p. 1629.

vessels in question, when they could have been so easily dislodged, as was proven when the effort was in fact made. The case can not be held as authority for or against the general rule of international law on this subject.

The umpire holds that this historical review emphasizes and strengthens at every point the position taken by him in the cases of de Lemos[a] and Crossman[b] as to the meaning of the charging words used, interpreting the same from the general purpose, plan, and purview of the protocol itself. It did not seem to him, then, that there could possibly be any uncertainty concerning language apparently so plain and unambiguous to which he gave the only meaning of which it is susceptible *in law.*

From this review of the differences which arose between the claimant government it is found that the ultimatum contained no claim for injuries or damages other than those *well founded in law and fact.* That Germany, its ally, speaking for both, explained that under the language in question there was always the necessity resting upon the claimant government of "intrinsic justification" in each particular case; and that there was always to be decided the question of the legality or illegality of the injuries or seizures complained of. And in silence and tacit acquiescence passed on the statement of Germany, made in careful comparison of views, that its civil-war claims were for acts of violence committed by Venezuelan authorities and her agents. That during the time covered by this review in none of the correspondence or conferences of the allies with Venezuela, or between the allies themselves, or of the allies or Venezuela with the United States Government, or with Mr. Bowen, has the umpire been able to find a sentence, a phrase, or a word directly or indirectly making claim to indemnity for losses suffered through acts of insurgents or directly or indirectly making allusion thereto.

The umpire finds that President Castro understood he was admitting the liability of his Government only for such claims as were "just;" that Mr. Bowen understood he was submitting to arbitration only the matters contained in the ultimatum of each of the allied powers; that the claimant government thought the terms of submission broad enough to include such claims or other claims is not important when considered alone. It becomes important only when it is established that the respondent government knew of and assented to the submission of such claims. The review which has been made does not disclose to the umpire any such knowledge or assent. Rather, he finds not the slightest hint that such a proposition could or would be made or was made to the respondent government by the claimant government or by either of the allied powers. Neither was there anything in the anterior diplomatic action or attitude of the claimant government, or of Germany or of Italy, toward other nations similarly constituted and conditioned, to suggest the possibility, even, of such a claim upon the respondent government, but quite the contrary conclusion was to be drawn therefrom. Hence the umpire holds that the Government of Venezuela did not specifically agree in the protocols to be subject to indemnities for the acts of insurgents.

This leaves the question of liability for the acts of insurgents to rest upon the general principles governing such case.

---

[a] Page 302. [b] Page 298.

In the opinion of the umpire it is stated with precision in the treaty of Germany with Colombia in 1892:

> It is also stipulated between the contracting parties that the German Government will not attempt to hold the Colombian Government responsible, unless there be due want of diligence on the part of the Colombian authorities or their agents, for the injuries, oppressions, or extortions occasioned in time of insurrection or civil war to German subjects in the territory of Colombia, through rebels, or caused by savage tribes beyond the control of the Government.[a]

It is also held that the want of due diligence must be made a part of the claimant's case and be established by competent evidence. This is brought out in the treaty of Italy with Colombia in 1892, where the language is "save in the case of *proven* want of due diligence on the part of the Colombian authorities or their agents," and such a requirement is strictly in accord with the ordinary rules of evidence.

If less inequity would result to *all* parties concerned were the British claims allowed than if they were denied it might be necessary to allow them. Reference to the treaties existing between many of the claimant countries and other South American or Central American republics, and of Italy with Venezuela, will settle the question of general equity and will demonstrate that it is only by minimizing the use of the rule of responsibility that we can cause the least inequity. It is, also, easily apparent that if wrong has been done in the cases of Germany and of France it will not be righted by repeating it. The British Government is not in fault because some government has asked and obtained awards for such acts. Its foreign office carefully excluded all claims for acts of revolutionists from the memorials to be presented to the Mixed Commission, and thus prepared they were presented.

The learned British agent is frank and free to assert that his Government preferred that there should be no award in any commission based on such a claim. It is also as apparent as though stated that the British Government expected there would be no such claim made or allowed in any commission. Otherwise they would have admitted the revolutionary feature into their reclamations in the first instance as, according to the learned British agent, they considered such demands rightful to them if granted to any. Certainly, it is not the fault of the umpire of the British-Venzuelan Mixed Commission who held in the de Lemos case that there was responsibility only for illegal acts by the Government or some one acting in its behalf or under its order. It is not the fault of the Italian-Venezuelan Mixed Commission, whose umpire settled the question adversely to such claims before any opinion had been given favoring such claims. The questions of equity by equality and equity by relation of Venezuela to other governments were very strongly before the representatives of the governments, who asked and obtained favorable rulings thereon after the opinions opposed thereto had been declared and filed and after these very governments had established the law and the equities to be in accordance with such denial by their own solemn engagements with similarly ordered republics.

A broader view than is obtained within these ten mixed commissions may well be taken before passing upon this question of equity by equality and by relation. How stands the record? The countries hereinafter named have treaties identical in principle with those of Germany and Colombia and Italy and Colombia:

---

[a] Art. XX. (See British and Foreign State Papers, Vol. 84, p. 144.)

Italy-Venezuela, 1861;[a] Italy-Colombia, 1892; Spain-Venezuela, 1861;[b] Spain-Ecuador, 1888;[c] Spain-Honduras, 1895; Belgium-Venezuela, 1884;[d] France-Mexico, 1886;[e] France-Colombia, 1892;[f] Germany-Mexico; San Salvador-Venezuela, 1883.[g]

The learned British agent also raises the point that an international rule applicable to "well-ordered States" in regard to the irresponsibility of governments for the acts of unsuccessful revolutionists may not be easily applied to States possessing the history of the respondent Government.

Concerning this point the umpire is content to accept the concrete judgment, practically uniform, of States whose skilled and trained diplomatists have given this question long years of patient consideration. This concrete judgment he has in the treaties made between Germany and Colombia and Italy and Colombia heretofore quoted and between the other countries above cited, as well as by the historic attitude of the British Government and the Government of the United States of America in their diplomatic treatment of these questions in relation to countries having the same general characteristics, in this regard, as Venezuela.

There now remains to consider only the "most-favored-nation" proposition. Regarding this it is sufficient in the judgment of the umpire to say that Venezuela has granted to no other country any favors in these protocols not granted to the Government of His Britannic Majesty. He says this modestly, but conscientiously, after careful study. He would avoid, if he could, the clash in judgment this statement involves, but he can not do so and be true to his solemn convictions. That there have been interpretations of several protocols with which the present umpire can not agree and with which this opinion will not accord, he admits to be true. But these interpretations were had and the consequent results followed against the earnest protest and vigorous opposition of the Government of Venezuela, and were therefore clearly not favors granted by her.

In considering, determining, and applying the protocols to this case and to all others; in weighing and settling the facts and the law in each case; in meeting and answering every proposition connected with the proceedings of this Mixed Commission the umpire must never lose sight of the most essential part of the protocols which is none other than the solemn oath or declaration which it prescribes. Before we were allowed to assume the functions of our high office we were required by its provisions to make solemn agreement and declaration—

carefully to examine and impartially decide, according to justice and the provisions of the protocol of the 13th February, 1903, and of the present agreement, all claims submitted to them (us).

While the oath adds to the requirements of administering our trust according to justice the provisions of the protocol, it is not to be presumed or admitted that there is aught in either of those protocols which is contrary to or subversive of its high and principal behest—justice. This, then, is the ultimate purpose and required result of all our inquiries, examinations, and decisions. It is made, as it should be made, the

[a] British and Foreign St. Papers, vol. 54, p. 1330.
[b] Id., vol. 53, p. 1050.
[c] Id., vol. 79, p. 632.
[d] Id., vol. 75, p. 39.
[e] Id., vol. 77, p. 1090.
[f] Id., vol. 84, p. 137.
[g] Id., vol. 74, p. 298.

chief cornerstone of this arbitral structure. There is one other and very important rule of action prescribed to govern us in our deliberations; it is that we "shall decide all claims upon a basis of absolute equity." The way is equity, the end is justice. There is no other way and no other end within the purview of the protocol. Not only must each particular case be determined on these two bases, but each part of the protocols relating to this Commission must be interpreted and construed in accordance therewith. If there be two views of some provision which, although differing, strike the mind with equal force and there is a hesitancy which to adopt, the one must be taken which best withstands the application of this supreme test. The protocols will permit no construction of any part which in its adaptation may deviate from the chosen path or lead to a conclusion at war with the required end. All and every part thereof must be read and interpreted with this fact always predominant. If a question arises, not readily to be apprehended, wherein equity and justice differentiate, then the former must yield, because the obligation of the prescribed oath is the superior rule of action.

International law is not in terms invoked in these protocols, neither is it renounced. But in the judgment of the umpire, since it is a part of the law of the land of both Governments, and since it is the only definitive rule between nations, it is the law of this tribunal interwoven in every line, word, and syllable of the protocols, defining their meaning and illuminating the text; restraining, impelling, and directing every act thereunder.

Webster thus defines equity:

> Equality of rights; natural justice or right; * * * fairness in determination of conflicting claims; impartiality.

Bouvier says in part:

> In a more limited application, it denotes equal justice between contending parties. This is its moral signification, in reference to the rights of parties having conflicting claims; but applied to courts and their jurisdiction and proceedings it has a more restrained and limited signification. (Vol. 1, p. 680.)

The phrase, "absolute equity," used in the protocols the umpire understands and interprets to mean equity unrestrained by any artificial rules in its application to the given case.

Since this is an international tribunal established by the agreement of nations there can be no other law, in the opinion of the umpire, for its government than the law of nations; and it is, indeed, scarcely necessary to say that the protocols are to be interpreted and this tribunal governed by that law, for there is no other; and that justice and equity are invoked and are to be paramount is not in conflict with this position, for international law is assumed to conform to justice and to be inspired by the principles of equity.

> International law is founded upon natural reason and justice. * * * (Wharton, vol. 1, sec. 8, p. 32.)
>
> The law of nations is the law of nature realized in the relations of separate political communities. (Holland's Studies in Int. Law, 169.)
>
> It is the necessary law of nations, because nations are bound by the law of nature to observe it. It is termed by others the natural law of nations because it is obligatory upon them in point of conscience. (Kent's Com., vol. 1, 2.)
>
> The end of the law of nations is the happiness and perfection of the general society of mankind, etc. (Ib.)
>
> International law * * * is a system of rules * * * not inconsistent with the principles of natural justice. (Woolsey, Introd. to Int. Law, secs. 2 and 3.)
>
> The rules of conduct regulating the intercourse of States. (Halleck, chap. 2, sec. 1.)

The intercourse of nations, therefore, gives rise to international rights and duties, and these require an international law for their regulation and enforcement. That law is not enacted by the will of any common superior upon earth, but it is enacted by the will of God; and is expressed in the consent, tacit or declared, of independent nations. * * * Custom and usage, moreover, outwardly express the consent of nations to things which are naturally—that is, by the law of God—binding upon them. (Ib., sec. 6, quoting Phillimore, vol. 1, preface.)

That when international law has arisen by the free assent of those who enter into certain arrangements, obedience to its provisions is as truly in accordance with natural law—which requires the observance of contracts—as if natural law had been intuitively discerned or revealed from Heaven, and no consent had been necessary at the outset. (Bouvier's Law Dict., vol. 1, p. 1102.)

The rules which determine the conduct of the general body of civilized States in their dealings with one another. (Lawrence, Int. Law, sec. 1.)

International law consists in certain rules of conduct which modern civilized states regard as being binding on them in their relations with one another with a force comparable in nature and degree to that binding the conscientious person to obey the laws of his country. (Hall, Int. Law, 1.)

In what has been stated I have referred exclusively to the international obligations imposed on the United States by the general principles of international law, which are the only standards measuring our duty to the Government of Honduras. (Mr. Bayard, Sec. of State, to Mr. Hall, Feb. 6, 1886.)

International law in its practical result guides, restricts, and restrains the strong states, guards and protects the weak.

The guide, commonly safe and constant and usually to be followed, is international law. But if in the given case, not easily to be assumed, it should occur that its precepts are opposed to justice, or lead away from it, or are in disregard of it, or are inadequate or inapplicable, then the determination must be made by recourse to the underlying principles of justice and equity applied as best may be to the cause in hand. The umpire will apply the precepts of international law in all cases where such use will insure justice and equity for this reason, if for no other—that well-defined principles and precepts which have successfully endured the test of time and the crucible of experience and criticism are safe in use, and should never carelessly be departed from in order that one may step out into a way unknown to walk by a course unmarked. But these precepts are to be used as a means to the end, which end is justice.

The rule of justice, equity, and law deduced by the umpire and to be applied here is well expressed in the treaties of Germany and Italy with Colombia hereinbefore quoted. Adapted for our use, the rule will read as follows:

The Government of Venezuela will not be held liable to the British Government for injuries to property or wrongful seizures thereof, or for damages, vexations, or exactions committed upon or suffered by British subjects in Venezuela during any unsuccessful insurrection or civil war which has occurred in that country unless there be proven fault or want of due diligence on the part of the Venezuelan authorities or their agents.

The Aroa mines supplementary claim is based wholly on the seizure of their property by revolutionary troops without proof of any fault or lack of due diligence on the part of the titular and respondent Government.

Under the rule adopted this claim must be, and is hereby, disallowed, and judgment will be entered to that effect.

Bolívar Railway Company Case.

A nation is responsible for the acts of a successful revolution from the time such revolution began.[a]

PLUMLEY, *Umpire:*

When this claim came to the umpire on the disagreement of the honorable commissioners, as to parts thereof there had been agreed to and allowed by the commissioners the following amounts:

	Bolivars.
The whole of the claim particularized in—	
Appendix A	105,738.59
Appendix B	28,600.24
Appendix C	40,132.59
Appendix D	126,081.27
Appendix E	39,038.81
Appendix F	2,272.50
Appendix G	38,260.75
In the claim particularized in—	
Appendix H: Nos. 30, 31, 33, 35, 36, 44, 46, 48, 51, and 57	20,036.93
Appendix K: Nos. 8, 10, 12, 13, 14, and 15	57,148.86
Appendix N:	
Nos. 1, 3, 4, 5, 7, 9, 12–33, inclusive, 36, 37, 39, 40, 41, 45, 46, 48, 49, 52, 54, 56, 65, 66, 69, 74, 76, 77, 78 — Bolivars. 277,356.58	
Nos. 71, 81, 82 — 37,500.00	
	314,356.58
Total amount agreed upon by Commissioners	771,667.12

The Commissioners agreed to a disallowance of the following amounts:

In the claim particularized in—	Bolivars.	
Appendix J	577.50	
Appendix L	8,837.07	
Appendix N: Nos. 71, 81, and 82	16,976.88	
Total amount of disallowance agreed to by Commissioners		26,391.45
The whole amount of claims agreed to by the Commissioners, both allowed and disallowed		798,058.57

The Commissioners disagreed as to the following amounts:

In the claim particularized in—	Bolivars.	
Appendix H	313,576.27	
Appendix K	88,349.96	
Appendix M (disagreement to whole of this claim)	2,215.87	
Appendix N	786,876.44	
The whole amount of claims disagreed to by the Commissioners.		1,173,018.54
		1,971,077.11

The Bolívar Railway Company has credited the Government of Venezuela with the following amounts:

	Bolivars.	
Weekly payments made by the Government in 1897 and 1898	46,000.00	
Further amounts paid by the Government in 1899	6,360.00	
Payment for patent fuel in 1899	2,272.50	
Allowance for damaged sleepers recovered from the Government troops in Tucacas	58,659.40	
Total amount of credits		113,291.90
Claim as presented to this Commission		1,857,785.21

[a] See also p. 7.

Under Appendix H, and referring to the disputed items thereunder, there are allowed by the umpire the following:

	Bolivars.
Nos. 1, 2, and 3, referring to services performed by the railway company in the month of September, 1899, and vouched for by Gen. Ismael Manzanares	20,274.94
No. 4, covering items September 3–30, performed for the Government, and vouched for by Gen. Lopez García, who was a supporter of the titular government of Andrade	39,319.30
No. 5, use of the steamer *Barquisimeto* eighteen days	9,090.00
No. 6, for the use of cars between October 10 and 24, and vouched for by Gen. Lopez García	300.00
No. 7, for the use of the steamer *Barquisimeto* for thirty-one days	15,655.00
No. 8, account accrued under the order of Gen. Carlos Liscano, and vouched for by him between October 20 and 31	5,722.25
No. 9, an account accrued between October 16 and 31 through the order of Gen. Ismael Manzanares, and vouched for by Valentin Torres	26,586.24
No. 10, an account accrued between October 8 and 15, and vouched for by Gen. Lopez García	7,425.00
No. 11, an account accrued between October 1 and 15, under the order of Col. Manuel Vargas	2,454.66
No. 12, an account accrued between October 1 and 15, through the order of Gen. Valentin Torres, and vouched for by E. Medina	12,769.00
No. 13, an account accrued through Gen. Ismael Manzanares	22,313.16
No. 14, an account contracted by the Government through its representative in Tucacas, Lopez García, October 1–17	4,793.67

These accounts accrued during the successful revolution under General Castro, and represent services performed either on his behalf or on behalf of the titular government, and are, therefore, properly chargeable to the present Government. It is not necessary to define each, although the umpire has carefully inspected each account and vouchers covering the same periods and is satisfied that the above statement is correct. He also has the assistance of the telegram of November 4, 1903, sent by R. Gonzalez, P., to Gen. J. M. García Gomez explaining the relation of some of the generals whose names appear and concerning the items above allowed.

	Bolivars.
No. 15 is an account contracted by General Guerra on November 3 and 4. He is known to have been in command of the army that attacked the revolting general at Puerto Cabello on November 11, and the umpire will assume that this is a proper charge against the Government	5,302.50
No. 16, for the use of the steamer *Barquisimeto* between November 1–16 inclusive	8,449.56
It is a matter of history that Gen. Antonio Paredes was military governor of Puerto Cabello and its fortifications under Andrade, and continued in such office after the departure of Andrade and the dissolution of his Government. It is understood that he accepted for a brief time General Castro's authority, but that on the 7th of November he repudiated such relations and revolted, fortifying Puerto Cabello, and that an attack was made upon him on November 11–12 by sea and land. Since Parades had no fleet and no occasion for the use of the sea, while the Government had its fleet before Puerto Cabello and was in control of the sea in front of Puerto Cabello, the assumption is very clear that the use of the steamer between points and Puerto Cabello could only be under the employment of the National Government.	
No. 19, accounts contracted between November 18 and 28 by Gen. Valentín Torres, and vouched by Medina	7,183.78
No. 20, for the use of a steam launch under the order of Ramón Fragachen	600.00
This allowance is animated with the same reason as was the allowance in No. 16. This use occurred the 14th day of November, which is included in the time covered by the use of the steamer *Barquisimeto*, and when it is not consistent with the other circumstances to assume that steam launches were being used by the nationalista revolutionaries.	

	Bolivars.
No. 22 is an account contracted by Gen. Valentín Torres, and vouched for by him, between November 1 and 15	18,346.27
No. 23, an account contracted by Gen. Juan Isava, and vouched for in another place by Fragachen	11,855.18
This allowance is under the presumption and belief that at this time he was not in the service of the nationalista revolutionaries, although he was later.	
No. 29, an account contracted by Gen. Lopez García between December 28 and 30	4,509.16
No. 34, an account contracted by Gen. Lopez García January 19, 1900	18.80
No. 35½ (this number is the umpire's) is of date January 29 and represents an account presented on that day for 20,546.25 bolivars, less amount received on account of coal, 2,272.50 bolivars	18,273.75
It is assumed that the account, both debit and credit, was satisfactory to the Government or it would have raised a question direct to the Commission concerning that particular item, and if the credit is correct it is right to assume that the debit is to the right party.	
No. 37, an account contracted by Gen. Lopez García and vouched for by him, covering dates from February 1 to 26	1,358.80
No. 38, for damages caused the company by Gen. Lopez García on a day between February 1 and 28	363.00
No. 39, an account contracted between February 15 and 23 by General Solagnie	2,746.02
The position of General Solagnie to the Government is ascertained by reference to voucher No. 12 in Appendix K, which voucher is countersigned by Gen. P. Gonzalez, and in that voucher there are entries for the month of March, 1900, stating accounts against the Government for the transportation in special trains of General Solagnie, his staff, and troops. The umpire therefore feels safe in placing this account, made at Solagnie's order the month preceding, among the items of Government indebtedness.	
No. 40 is another of the same character as No. 39, under the same person's order, covering the date from March 1 to 15	3,081.39
No. 41, an account contracted by the order of General García, covering the same time as No. 40	166.40
No. 42 covers account contracted between March 6 and 31, inclusive, through the order of F. Solorzano	290.43
No. 43 covers accounts between March 7 and 24, inclusive, through the order of F. Solorzano	180.76
The last two allowances are made on the statement before the Commission by the British agent that Solorzano was at this time commander of the garrison at Tucacas, appointed by General Castro himself. This statement was made about a month since, has not been questioned, and the umpire feels safe in accepting it, knowing that it was made in good faith and on what was believed to be correct information.	
No. 45, an account contracted between March 1 and 28 by Gen. J. M. Quesada, and vouched for by B. Lopez Fonseca	332.79
This account is thus placed because of the next account accepted by the honorable Commissioner for Venezuela wherein the charge is for an account contracted by Gen. Gonzalez Pacheco and vouched for by Lopez Fonseca. No. 46 being for a single item of April 2, so immediate to the other, there can be no mistake in regarding No. 45 as well sustained when vouched for by Fonseca.	
No. 47, an account contracted by Gen. F. Solorzano and vouched by Juan Felix Castillo	3,424.33
There is no question about the position of Castillo, and the umpire had already settled the relation of Solorzano, which is further sustained in this item by finding him associated with Castillo.	
No. 49, of date of April 30, for repairs and materials on account of injuries to the railway and the rolling stock resulting from the use by the Government troops during the war, and vouched for by Lopez Fonseca	12,498.75
No. 50 is an account contracted by Gen. J. Felix Castillo from May 2 to 31, inclusive, and vouched by him	847.21
No. 52 is an account contracted by General Castillo from May 22 to 26, inclusive	17.46

	Bolivars.
No. 53 is for materials taken from the station of El Hacha by General Aranguren. The reason for this allowance is the presumption that at this time there was no general revolutionary movement, and in fact it was practically at an end all through that portion of Venezuela. Taking this with the further fact that the Government being well advised of this charge has introduced neither evidence nor denial, the umpire is convinced that it is probably correct.	167.00
No. 54 is for transportation in accordance with orders of the minister of war	14.70
No. 55 is for carrying freight under the order of General Castillo	21.16
No. 56 is for transportation through the order of General Castillo between June 1 and 28	167.80
The whole amount allowed by the umpire in Appendix H is	266,920.22

Under Appendix K, and referring to the disputed items thereunder, there are allowed by the umpire the following:

Nos. 1 and 2 are for trains, trolleys, and other services of the railway to the Government under the order of General Manzanares, covering the month of September, 1899	Bolivars. 12,311.81
No. 3 is an account for the use of trolleys, etc., order by Gen. Ismael Manzanares, and vouched by him, covering dates from September 5 to 30	593.50
No. 4 is an account of special trains ordered by Gen. Carlos Liscano, covering dates from October 7 to 28	6,055.82
No. 5 is an account of special trains by the order of General Manzanares, vouched by him, covering dates October 21–25. The accounts up to and including No. 5 cover dates on which the services were performed either for the titular government then existing or for the successful revolution, and in either case are properly chargeable to the present Government.	29,646.29
No. 6 is a detailed account of trains employed under the order of General Manzanares, covering dates November 3 to 14	3,392.12
No. 11. This account was contracted for and on behalf of the troops of Gen. Jacinto Lara and is vouched by General Solagnie	16,567.76
The whole amount allowed by the umpire in Appendix K is	68,567.30

Under Appendix M: This is a small claim for freight, etc., carried for the Government in the State of Lara in the years 1899 and 1900, and the allowance is objected to because it does not bear evidence of having been first charged to the Government, and there is a denial of authority on the part of the officials of a State making accounts chargeable to the National Government without especial order to that effect.

The relation of the several States to the National Government is of such intricate character, apparently so intimate that it becomes difficult to discriminate rightfully between the two, if discrimination is possible in such matters. No question is made but that the service was performed in the interest of the State of Lara, and that it was proper service. The umpire knows that the several States are constituted by the National Government and the governors are appointed by the National Government and hold their offices during its pleasure; that a certain income is set aside for the support of these State governments; and from such knowledge as a basis in this regard he is satisfied that, if this account is allowed against the National Government and on behalf of the railway company, the National Government has such a relation to the State of Lara that it may easily recoup the sum if it is not properly chargeable to it, while if disallowed as against the railway company it is wholly remediless. It appears to the umpire, therefore,

that it is safe for the National Government and just and equitable to the company that the question should be resolved in favor of the railway company, and the claim is allowed at 2,215.87 bolivars.

Under Appendix N, and referring to the disputed items thereunder, there are allowed by the umpire the following:

	Bolivars.
Nos. 2, 6, 8, and 10 are for services performed on behalf of the National Government for the transportation of troops, officers, prisoners, munitions and materials of war, all apparently of a character necessary for the use of the Government, and under the order and voucher of Gen. Juan F. Castillo, civil and military chief at Tucacas	362.87
No. 11, service in October, 1900, for transportation of one official by the order of Governor Urbina at Tucacas. It bears the appearance of correctness, carries with it the character of service for which a government may properly be charged, and is vouched by one assuming authority, which is not questioned before this Commission	2.31
The whole amount allowed by the umpire in Appendix N is	365.17

The umpire is next to consider, under Appendix H, those accounts which represent services performed on behalf of troops and officers engaged in the second Hernandez revolution. Those accounts are—

	Bolivars.
No. 17. Under order of Gen. Avelino Jiménez, November 30	1,839.03
No. 18. Under order of Col. M. Vargas, November 18–29	1,483.25
No. 21. Under order of Col. M. Vargas, November 1–15	10,212.07
No. 24. Under order of Gen. Avelino Jiménez, December 1–15	17,546.02
No. 25. Under order of Gen. E. Garmendía and vouched by A. Jiménez, December 9	38.60
No. 26. Under order of General Jiménez, December 16–28	12,936.03
No. 27. Under order of General Jiménez, December 29–31	1,455.57
No. 28. Under order of General Jiménez, December 29–31	1,083.58
No. 38. Under order of General Jiménez, January 3, 1900	32.50
The whole amount of these is	46,626.05

There are to be considered also claims of a similar character under Appendix K. These are—

	Bolivars.
No. 7. December 2, 1899, which are asserted to be contracts through the civil and military chief of the State of Lara, vouched by E. Garmendía, amounting to	8,234.60
No. 9. A similar account of December 14, amounting to	11,548.06
The whole amount of these is	19,782.66

The umpire is convinced by the charges themselves that they are for services of the nationalista revolution. For this he relies upon the telegram heretofore referred to and upon the internal evidences found in the vouchers themselves. The charge in No. 7 states that it is on account of the "revolution," and that it was contracted through the orders of the civil and military chief of the State of Lara. In voucher No. 9 it is found that this is an account of the liberal nationalista revolution and through the orders of the civil and military chief of the State of Lara in Barquisimeto. The first item of this account is December 4, 1899, and is for a special train to conduct Gen. E. Garmendía and his forces to El Hacha and return to Barquisimeto with comisionados. It will be observed that this is the same day that the same General Garmendía has vouched for the correctness of No. 7. This service in No. 9 first mentioned therein was performed by virtue of a written order attached to the voucher of date December 4, and signed by E. Garmendía, and he follows this with another order of the

10th of December, which is charged of date December 12 or 14, and in either case is for the conduct by train of troops and guns. His are the principal orders supporting this voucher, but there are orders by General Jiménez in this same month supporting this same voucher, showing that it was correctly charged to the revolution liberal nationalista. The umpire therefore entertains no doubt that these two accounts, Nos. 7 and 9, are of the same character, both assisting to oppose the Government of which General Castro was the head.

Concerning these accounts, both in H and K, which were for services rendered by the railway company to the liberal nationalista (or Hernandez) revolution, it is urged with ingenuity and ability by both the learned agent and the honorable Commissioner for the claimant Government that the present Government is responsible for them because they say that while the State of Lara had been of a revolutionist tendency and activity at a time previous, still at the time that General Castro came to that State with his revolutionary forces there was a condition of quiet which was disturbed by his presence and effort, and a large revolutionary force gathered to join with General Castro and fought their way to the capital, resulting in General Castro's headship of the Government, and that the months of disturbance and war which followed in that State and section were the result of this fomentation by General Castro, and that until there was secured peace and quiet under his Government it is a part of his inheritance that he should assume responsibility for those results. They also ably contend for the importance of this and other railways in Venezuela to the nation in the development of its resources, the reliance of the nation upon these railways and the propriety and necessity of assuming a different position to this railway, especially from what might be taken toward other institutions or other classes of property. The umpire is in perfect harmony in regard to the great importance of such national highways to the internal development of the country as well as for its valued uses in case the Government needs to transport rapidly troops toward the scene of disturbance or conflict; but it is his opinion that his discretion goes no further than sound judicial discretion, and that all such arguments are properly addressed only to the political department of government and not to its judicial department or to those who may act in the limited sphere allowed them who are occupying and fulfilling judicial functions.

It is also the opinion of the umpire that history is not in perfect accord with their position on this question. From the best sources open to the umpire he believes the truth to be that the troops which came from Lara and vicinity, equally with others, came with the supreme purpose of overthrowing the Andrade government, and necessarily expecting if success crowned their efforts that their leader, General Castro, would be the natural head of the government. There are no historic evidences of any dissatisfaction amounting to a revolutionary spirit on their part against his assumption of the headship of the government.

History discloses that Andrade abandoned Caracas on the morning of October 20, starting for La Guaira, at which place he disbanded the men who, remaining faithfully with him, had gone thus far, and he himself took ship for the Antilles; that on the day of his departure General Rodriguez, president of the government council, assumed executive power and named a ministry; then he and General Mendoza

and General Castro came to terms, and General Castro entered Caracas in the evening of October 22, 1899, and assumed power on the next day as the supreme chief of the Republic and appointed his cabinet. On that day, as supreme chief, he set at liberty the political prisoners who had been placed in prison by Andrade, and among them Gen. José Manuel Hernandez, who had been leader in the nationalista revolution and was in prison on account of such leadership. It was in making up his cabinet that General Castro made General Hernandez minister of public works, which at the time he did not accept or decline. In the early morning of October 27 General Hernandez stealthily left Caracas, accompanied by Gen. Samuel Acosta with a division of soldiers, and went out through El Valle, on the La Victoria road. October 28 there was circulated in Caracas and elsewhere through the country his proclamation dated the 26th instant, calling upon the country to overthrow the government of General Castro, at the same time declining the office of minister of public works. The watchword of General Hernandez and his followers in his first revolution was the same as was assumed immediately by his followers in this second revolution, and this fact is found so well expressed and so generally understood by intelligent men that the December accounts of the Bolívar Railway Company state that they were made in the service of the liberal nationalista revolution. It is not their claim that it was the liberal restauradora revolution, which was the watchword of General Castro and his followers, referring to the alleged subversion of the constitution by President Andrade, which had given the cause and the occasion for the successful revolution led by General Castro. In the judgment of the umpire that revolution ended with the triumph of its leader and his installation as supreme chief of the Republic. It may be thought that to be a successful revolution it must defend itself against those who dispute the government it had formed, but it did successfully defend and hence establish its right of success as claimed by it when it made its triumphal march into Caracas and proclaimed its chief the head of the Republic.

If the personal responsibility of General Castro in this matter were the question for decision, it might be possible to hold him responsible for the second revolution as growing out of the revolution he had led. Such, however, is not the ground on which successful revolutions are charged, through the government, with responsibility. Responsibility comes because it is the same nation. Nations do not die when there is a change of their rulers or in their forms of government. These are but expressions of a change of national will. "The king is dead; long live the king!" has typified this thought for ages. The nation is responsible for the debts contracted by its titular government, and that responsibility continues through all changing forms of government until the obligation is discharged. The nation is responsible for the obligations of a successful revolution from its beginning, because, in theory, it represented ab initio a changing national will, crystallizing in the finally successful result. The nation did not disturb or foment a revolution in Lara for which it was responsible beyond the point where its will had been expressed and settled in the Government established through General Castro. Success demonstrates that from the beginning it was registering the national will.

This rule was laid down in Williams *v.* Bruffy (96 U. S. Sup. Ct., 176), wherein the court say, speaking of a similar condition—

such as exists where a portion of the inhabitants of a country have separated themselves from the parent state and established an independent government. The validity of its acts, both against the parent state and its citizens or subjects, depends entirely upon its ultimate success. If it fails to establish itself permanently, all such acts perish with it. If it succeed and become recognized, its acts from the commencement of its existence are upheld as those of an independent nation.

Neither was the nation responsible because General Castro, acting in his public capacity, set free from prison General Hernandez, for it was not done with a purpose to incite a revolution, but to complete and make permanent pacification between factions and to show his loyalty, present and prospective, to the friends of General Hernandez, who as opponents of the Andrade administration had joined their forces with his for its overthrow. The umpire does not find warrant in international law or in the proper application of the principles of justice and equity to the case at hand for holding the present Government of Venezuela responsible for the efforts of General Hernandez, his associates and compatriots, in their labors to destroy it. He holds that as a matter of fact and law it was a distinct and specific revolution based upon distinct and specific ideas of national government and with the avowed purpose of deposing President Castro and installing General Hernandez. It was no longer a battle for the restoration of the constitution, but was along the same lines that were established by General Hernandez and supported by his followers from the first revolution down to and inclusive of the second.

It follows, therefore, that so many of the items of Appendix H and Appendix K as were for services in behalf of this nationalista revolution are disallowed.

The umpire considers next, under Appendix N, the accounts which represent services performed on behalf of the revolution, generally known as the Matos revolution, commencing in the early winter of 1901–2 and closing in the spring or summer of 1903. These accounts are—

	Bolivars.
No. 34. Order of E. J. Aular, December, 1901	7,585.12
No. 35. Order of E. J. Aular, January, 1902	9,717.86
No. 42. Order of E. J. Aular, February, 1902	15,569.77
No. 43. Order of E. J. Aular, February, 1902	65.45
No. 44. Order of E. J. Aular, February, 1902	5,033.08
No. 47. Order of General Fonseca, March, 1902	5,754.69
No. 50. Order of General Solagnie, April, 1902	30.29
No. 51. Order of General Solagnie, April, 1902	40,998.62
No. 53. Order of General Solagnie, May, 1902	79,661.78
No. 55. Order of General Solagnie, June, 1902	71,828.86
No. 57. Order of General Solagnie, July, 1902	108,259.10
No. 58. Order of Gen. F. Batalla, August, 1902	58,138.42
No. 59. Order of Gen. F. Batalla, August, 1902	4,453.57
No. 60. Order of M. F. Bernal, August, 1902	3,831.11
No. 61. Order of M. F. Bernal, August, 1902	362.59
No. 62. Order of M. F. Bernal, October, 1902	561.16
No. 63. Order of General Solagnie, November, 1902	44,160.54
No. 64. Order of M. F. Bernal, November, 1902	1,464.39
No. 67. Order of General Solagnie, December, 1902	59,119.91
No. 68. Order of General Solagnie, January, 1903	57,514.56
No. 70. Order of General Solagnie, February, 1903	39,177.32
No. 72. Order of General Solagnie, February, 1903	10,981.87
No. 73. Order of General Solagnie, February, 1903	34,273.36
No. 75. Order of General Solagnie, April, 1903	71,329.00
No. 80. For use of revolutionary army, May, 1903	37,267.69
The whole amount of these is	767,140.11

It is urged with ability and force by the learned agent and the honorable Commissioner for the British Government that the respondent Government should be held responsible for these accounts because during this time the railway company was denied all protection and compelled to render this service against its will for want of proper protection which diligence and good government would have provided. They claim that the character of the company's business and its property rights are such as to especially demand the utmost of protection and extreme care and attention on the part of the National Government. They further urge that its importance to the National Government should incite the furnishing of such protection, and, if not furnished, a willingness to reimburse it for its losses. The umpire is of opinion that while there is opportunity for the recognition of these cogent facts and arguments by the Government itself in its public capacity and animated by a broad national spirit, there is no power vested in this tribunal to make orders or establish awards not properly juridical in their character; that this tribunal can not take into consideration questions of national policy, but must confine itself to the determination of whether there has been an international wrong for which the respondent Government is responsible in damage, and that it performs its functions best and safest when it adheres most closely to the principles established by the law of nations. It has then only to determine whether there has been negligence in fact on the part of the respondent Government in such a way and to such an extent as to make it chargeable with the losses which this claimant company has suffered through the demands of the revolutionists.

The umpire has already passed upon this in his historical review of the events which led up to the Matos revolution and the struggle of the National Government for supremacy which followed. This historical review was part of an opinion in the supplementary claim of the Aroa mines, and he there found the fact to be adverse to the contention of the claimant Government, and he now says that in his judgment it can not be charged upon the respondent Government in its supreme struggle for existence it was negligent in its conduct toward this part of its territory. The war upon the National Government was started in the east and in the west substantially at the same time, and with a common purpose and evidently looking toward a common end. The revolutionists pushed their victorious forces toward the capital. The armies of the Government were driven back from the east and from the west as the forces of the revolution pushed their way on. Unfortunately this left in the west the State of Lara and the Bolívar Railway Company bereft of Government forces, and for quite a time the revolutionist troops were strongly intrenched in the sections in which this railway lies. Along with the presumption which stands by the side of the respondent Government that it will care to do its duty and will do its duty in this regard stand the historic facts that it fought in these sections until defeated and remained until driven out, and it went out not because it was weak and powerless, but because it was overcome by the superior strength of the revolutionary forces. In the judgment of the umpire it did not protect because it could not protect. After the blockade and the brief time necessary for recuperation of national strength, made necessary by the conditions attending and following the blockade, that section of the country had the first attention of the respondent Government, and it threw into that terri-

tory sufficient force under capable generals to defeat and drive out the revolutionist army. Hence so much of the claim as is found in the numbers above named in Appendix N is disallowed.

SUMMARY.

	Bolivars.
Total allowance by Commissioners	771,667.12
Total allowance by umpire	335,842.69
Interest to date of award	119,896.93
Expenses (translations, official authentications, copies for Commission)	1,796.25
Total	1,229,202.99

Judgment may be entered for the sum of £48,681.33.

SANTA CLARA ESTATES COMPANY CASE (SUPPLEMENTARY CLAIM).

The titular government has no right to collect taxes on property which have already been paid to a revolutionary government which had gained control over the portion of the national territory wherein the property is located, and taxes so collected must be returned.

PLUMLEY, *Umpire:*

In this case the Commissioners agreed that some indemnity was due to the claimant Government from the respondent Government on account of so much of the damage as occurred to the claimant through the acts of the Government or its authorities or agents; but they did not fix that amount, leaving the appraisement of damages to the umpire, and disagreed wholly as to that part of the claim representing damages and losses to the claimant through the acts of revolutionary forces and authorities.

The facts show that the Santa Clara Estates Company carried on business in the Orinoco district of Venezuela; that from the month of May, 1902, to May, 1903, the district where this property was situated was entirely in the hands of Matos revolutionaries or the so-called revolution of liberation. This body established itself as the government of that section of the country and to a certain extent entered upon the discharge of governmental functions. The business of the company was the raising of live stock on their several estates known as "Santa Clara," "Bombal," and "Guara," all situate in the State of Sucre, in the district of Sotillo. Their losses consist in the taking of their live stock for the uses of the revolution. There is no question that the property was taken in the manner alleged and that the company sustained large losses in consequence. The contention arises through the question whether under the particular circumstances detailed in the case there is ground for ignoring the ordinary rule concerning the responsibility of the titular government for the acts of revolutionaries. The learned agent for the British Government claims that it was negligence of the titular government to so long allow its revolted subjects to maintain an independent government; that there is a limit which must be reached within which the Government must reduce the revolutionaries to subjection, declare the independence of the revolted territory, and thereby permit the foreign governments to take the protection of their subjects into their own

hands, or accept the liability to pay compensation for the damages suffered at the hands of the revolutionary authorities because of apparent and actual negligence and inactivity. He submits that in this case the first step, that of reduction to subjection, was not taken within a reasonable time; that a whole year was beyond that proper limit of time during which the Venezuelan Government were justified in tolerating an independent government, for, he alleges, one determined battle was enough to dispose of the whole trouble; and that since they had not reduced the revolting subjects to subjection, nor permitted their independence, they had incurred responsibility after a reasonable time for the injuries committed by the Government in fact which the titular government allowed to remain and to be in control within the territory in question.

In regard to this argument of the learned British agent it is the opinion of the umpire that more dependence should be placed upon the actual diligence applied by the titular government to regain its lost territory and to suppress the revolutionary efforts than upon the mere question of time taken to accomplish that end; and the umpire recalls that Great Britain contended for seven years against the revolt of the thirteen American colonies before it consented to separation; that the United States of America fought the secession of the Confederate States for more than four years before it regained its revolted territory and had subjected the rebellious citizens to its control. And neither Great Britain nor the United States, notwithstanding the length of time intervening between the revolt and the termination of the same, admitted or discharged any liability to foreign governments for the acts of the revolutionaries in question. Other pertinent illustrations might be drawn from history more remote and more recent wherein a similar rule of nonliability under circumstances where the length of time elapsing between revolt and subjection by the titular government or success on the part of the revolutionary forces was greater than in the present case.

The issue in this regard is to be determined in the answer to this question, Was the length of time during which this independent government existed the result of the inefficiency and negligence of the Government in its general efforts to put down the revolution and to regain its lost territory throughout the whole country of Venezuela, or was it due to the extent, strength, and force of the revolution itself?

A brief résumé of the history of Venezuela for a short time preceding this revolution of liberation, as well as the facts connected with that revolution, becomes necessary.

It is generally accepted that not far from June, 1900, the country had become generally pacified and had accepted the administration of General Castro. Tranquillity prevailed, however, for only a very limited period. It was first seriously disturbed in the latter part of October, 1900, by a revolt at Yrapa, under Gen. Pedro Acosta, which was not suppressed until the following February. In the meantime there occurred the insurrectionary attempt of Gen. Celestino Peraza at La Mercedes. Then in July, 1901, came Gen. Carlos Rángel Carboras from Colombia, where he had been in hiding, aided by Colombian soldiers, and soon gathered in the western part of Venezuela an army of 4,000 men; in the early part of the succeeding August another force invaded Venezuela by way of Colombia, and in early October there was the revolution of Gen. Rafael Montillo in the State

of Lara. About this time Gen. Juan Pietri made an effort to combine the disaffected citizens in and around Caracas. All of these revolts were immediately met and in due time defeated; but they called for military movements in different directions and of considerable magnitude. They occasioned much loss of blood and national treasure, so that when the revolution of liberation, under General Matos, was launched upon the country in the latter part of December, 1901, it is historic that the Government had to enter upon its defense with very limited resources of men and money at its command, while the revolutionary forces were greatly aided financially by General Matos.

Almost simultaneously with the uprising in the east following the proclamation of General Matos there were similar uprisings in the west; there were fierce battles between them and the Government troops, with a general trend of victory toward the revolutionists, and by the latter part of March, 1902, much of the west and the greater part of the east had passed under their control. There were also naval contests favorable to them, and by the middle of May the governor of Trinidad advised the British foreign office that all Venezuelan ports except La Guaira were in the hands of the revolutionists. It was then that General Matos entered the country by the way of Carúpano and began his victorious march toward Caracas; and it was at this time that a portion of the garrison at Ciudad Bolivar revolted under Col. Ramón Farreras, and that city and the State of Guayana soon passed into revolutionary hands. There were also the advancing troops of the revolutionaries from the west to meet the uprisings then occurring in La Guaira, in the valleys of the Tuy, and in Guaripo, and with them to join the Matos forces which were at this time coming from the east; and this union was effected in early October. During all this period there had been constant, able, and strenuous effort on the part of President Castro, his officers and troops, to stay this rapidly rising and forceful tide of rebellion and to beat it back; but it was not until the combined revolutionary forces met him at La Victoria and battled with him for twenty days that he was able to deal them a destructive and disastrous blow. This signal defeat staggered the revolutionary forces and many of them disbanded, while the Government succeeded in regaining from them some of its interior and coast towns.

Close upon the heels of this signal triumph of the Government forces began the incident of the concerted action of the allies, and until the middle of February following all efforts of the Government were stayed and its powers paralyzed by the impending belligerent operations of the allied Governments and the actual state of blockade of all the ports of the country.

Certainly no charge of negligence can be placed against the National Government in this immediate crisis of its history. After the blockade was raised and peace between Venezuela and the allied Governments assured, the National Government assumed offensive operations against the revolutionary forces in the west, and the victory of General Gomez at El Guapo on the 13th, 14th, and 15th of April of the present year resulted in the practical overthrow of the revolution of that section of the country, and after the battle of El Guapo the troops of the Government were at once used in the restoration of the national power in the States of Varacua and Lara, and the defeat of the rebel armies in those sections resulted in their general surrender

and the hurried escape of General Matos and his leading generals to Curaçao and the proclamation by Matos, on the 11th of June, at Curaçao, declaring the war at an end. Shortly after this declaration of peace on the part of Matos the Government repossessed itself of all parts of the national territory excepting that portion adjacent to and within the city of Bolívar, and the attention of the Government was immediately and successfully directed against this last stronghold of the rebellion, and the revolution of liberation was at an end.

A war in which there were in a little over one year twenty sanguinary battles, forty battles of considerable character, and more than one hundred lesser engagements between contending troops, with a resultant loss of 12,000 lives, can hardly suggest passivity or negligence on the part of the National Government toward the revolution; and the umpire is impressed with the fact that such control as the revolutionists obtained in certain portions of the country was owing rather to the financial aid which it received through its chief, Matos, who, with the great body of men under his standard, made a combination for a time irresistible and overwhelming, than to any weakness, inefficiency, or negligence on the part of the titular government. In other words, history compels a belief that the Government did in fact what it has a right to have assumed it would do—made the best resistance possible under all the existing circumstances to the revolutionary forces seeking its overthrow. As previously suggested, it will be noted that the titular government met the revolution of liberation under Matos after several successive lesser revolutions which seriously taxed its military powers in men and treasure and necessarily depleted both; and that for some three months during the revolution its ordinary sources of income through its ports were entirely lost to it, and, while something of a national spirit was aroused by the occasion of the concerted action of the allied governments, its treasury suffered seriously.

It is therefore the opinion of the umpire that there was no undue delay on the part of the Government in the restoration of its power in the district under consideration, and that it was not through the weakness, inefficiency, or passivity of the Government that the revolution of liberation remained in control for the time named, but rather through its inherent strength in men, materials, and money, and in certain assisting circumstances.

The learned British agent would meet the ordinary assumption of diligence on the part of a government to regain its lost control of territory and to secure its lost control of its inhabitants by the fact that its recent efforts to compel repayment of taxes after these taxes had been once paid to the revolutionary government may be taken as having been contemplated by the Government during its delay in regaining such control; but, as the umpire finds, historically and not by assumption, that there has been no negligence or undue delay on the part of the National Government, the able and ingenious argument of the British agent in that regard can not prevail.

There remains to consider the validity of his contention that since Venezuela is now collecting taxes for the period when the revolutionaries were in control the National Government have thereby incurred a necessary responsibility for not having adequately protected its inhabitants in consideration for the taxes paid.

It is incontestably true that with the duty to pay public taxes flows the right of protection and the conscientious and careful discharge of all imposed public duties by the Government to which this tribute is made; that with the right to demand and exact revenue for the support of government stands the correlative duty to be competent and willing to discharge its public functions and conserve the welfare of the taxpayer, and that the one can not rightfully or lawfully exist in the absence of the other; but we have found it to be historically true that the Government of Venezuela was neither competent nor present to perform in any part its governmental functions at the place and within the period in question. They had wholly lost their sovereignty over this district and it was wholly out of their control and independent of the titular government, and the attempt to obtain or the obtaining of a second payment of public dues does not disturb the revolutionary status, while the original payment of taxes to the revolutionary government only makes more emphatic its complete control of the situation during the period in question.

While there is no question that the collection of taxes by the Government for the period during which it had lost its sovereignty over the territory in question is indefensible in law, logic, and ethics, the respondent Government is not a pioneer in this respect.

The United States of America may claim priority over them. In the war of 1812 between that country and Great Britain the latter country captured and held thereafter until the declaration of peace the town of Castine, in the State of Maine. After peace had been declared and evacuation had taken place the United States collector of customs for that port claimed a right to exact duties for goods which had been imported through the custom-house while it was in charge of the British Government, and to which latter Government the duties had been paid. The case went to the United States Supreme Court, and, under the title of United States *v.* Rice, is found in 4 Wheaton, 246, Justice Story giving the opinion, from which the umpire makes a brief quotation:

> The sovereignty of the United States over the territory was of course suspended, and the laws of the United States could no longer be rightfully enforced there or be obligatory upon the inhabitants who remained and submitted to the conquerors. By the surrender the inhabitants passed under a temporary allegiance to the British Government, and were bound by such laws, and such only, as it chose to recognize and impose. From the nature of the case, no other laws could be obligatory upon them, for where there is no protection or allegiance or sovereignty there can be no claim to obedience. Castine was, therefore, during this period, so far as respected our revenue laws, to be deemed a foreign port, and goods imported into it by the inhabitants were subject to such duties only as the British Government chose to require. Such goods were in no correct sense imported into the United States. The subsequent evacuation by the enemy and resumption of authority by the United States did not and could not change the character of the transactions. * * * The goods were liable to American duties when imported, or not at all. That they were not so liable at the time of importation is clear from all that has already been stated, and when, upon return of peace, the jurisdiction of the United States was reassumed they were in the same predicament as they would have been if Castine had been a foreign territory ceded by treaty to the United States and the goods had been previously imported there. In the latter case there would be no pretense to say that American duties could be demanded, and upon principles of public or municipal law the cases are not distinguishable. The authorities cited at the bar would, if there were any doubt, be decisive of the question. But we think it too clear to require any aid from authority.

The umpire holds, therefore, that the effect of the respondent Government in claiming and receiving a payment of taxes for a period of time when it had lost its sovereignty over the district in question, and could neither render protection nor receive obedience, is simply to make the respondent Government liable for a return of those illegally exacted taxes, as was held in the Italian-Venezuelan Mixed Claims Commission, now sitting at Caracas, by Ralston, umpire, in the matter of the Kingdom of Italy on behalf of Luigi Guastini,[a] to which reference may be had for a more extended discussion of the principles involved and for important citations and quotations there found.

Such exaction of taxes is without right; but it does not follow that there is an assumption on the part of the Government for the acts of revolutionaries. While the payment of taxes to the revolutionists did import the correlative duty of protection from them, for they were in a position and were bound in right and honor to grant it, there is certain logic in the astute contention of the learned British agent and there is grave error on the part of the officers of the Government if they demand such payment; but these wrongful demands can not change history or reverse international law.

Hence it follows that upon neither of the grounds held by the learned British agent can the losses of the claimant be considered of such a character that the National Government is bound to render him compensation for losses or injuries caused by the action of revolutionary troops; and so much of the claim is disallowed.

For that portion of the claim resting upon the action of the Government forces and authorities the umpire allows the sum of £492, which includes such expenses in the preparation of the claim as, in his judgment, should be allowed.

DAVIS CASE.

Where goods imported into Venezuela are by mistake or misrepresentation delivered by the customs officials to others than the consignee, the consignor can not maintain a claim against the Government of Venezuela when it appears that the wrongful delivery was only possible through the negligence of the consignor.

PLUMLEY, *Umpire:*

This case came to the umpire through the disagreement of the honorable Commissioners.

The umpire finds the decisive facts to be that Lanzoni, Martini & Co., an Italian company doing business in Venezuela as railway contractors and miners, contracted with Messrs. John Davis & Son, a British firm doing business at Derby, England, on or about the 26th of February, 1901, for certain goods in the line of the claimant company, consisting of oil for miners' safety lamps, lubricating oil, miners' safety-lamp glasses, and the like, and that on the 26th of February, 1901, these goods were shipped by the claimant company to go forward to the port of Guanta, in Venezuela, for the use of the said Lanzoni, Martini & Co. These goods were to be given up to Messrs. Lanzoni, Martini & Co. by the shipping agents of the claimant company in exchange for cash against bills of lading, which latter were forwarded with the accounts to Messrs. Ruys & Co., of Amsterdam,

---

[a] See p. 730.

for their collection, and on the 11th of April, 1901, the Dutch steamer *Prins Willem III*, from Amsterdam, put in at the port of Guanta, bringing these goods. The certified manifest showed that these goods were sent by Messrs. Hoyman & Schurman, of Amsterdam, to Guanta, consigned to Messrs John Davis & Son, to the order and account of said company. It further appears that Messrs Ruys & Co., of Amsterdam, had not succeeded in obtaining the cash of Messrs. Lanzoni, Martini & Co., and it appears that this Amsterdam company, shipping agents of the claimant company, did not forward such bills of lading to any agent or representative of the claimant company in Guanta or Barcelona, or send any instructions, suggestions, or restrictive orders to the customs officer at Guanta concerning the delivery of said goods only on payment therefor or otherwise; but on the 12th of April Messrs. Lanzoni, Martini & Co. applied to the customs officer requesting a certified copy of the consular invoice received by the customs-house stating that they had received no consular invoice, but had received the commercial invoice, and declaring that the goods in question had come for them and their use.

Mr. Lanzoni corroborated his statement by reading to the customs officer, correspondence which his company had had concerning these goods. The goods were initialed "L. M. & Co.," and Mr. Lanzoni insisted that these were the initials of their company and the mark used on all their imports, and urged upon the customs officer that if his company were not furnished with the certified copy requested it would be impossible to present the manifest within the time limited by law, and the goods would be subjected to its penalties. There was not known to the customs officer in Guanta or Barcelona any mercantile house of Messrs. John Davis & Son, nor was there known to such customs officer any representative of such a company in either Barcelona or Guanta. In fact, no one applied to the customs-house on behalf of the claimant company during the four workdays' period permitted by Venezuelan law for the claiming of the goods before fines would be imposed. The customs officer believing the representations of the Messrs. Lanzoni, Martini & Co., and understanding that company to be creditable and responsible, and having in no way been placed upon his guard against said company in regard to these goods, or requested in any way to protect the interests of the claimant company, the certified copy requested was furnished, and the manifest of Lanzoni, Martini & Co. was admitted and the goods delivered to them. It further appears that through the negligence of the claimant company, or of Ruys & Co., their shipping agents of Amsterdam, there was no one in Barcelona, or Guanta, or elsewhere in Venezuela, in receipt of the bills of lading, advised on behalf of the claimant company concerning said shipment, or in any way authorized to act for them or their shipping agents until after the 4th of July of that year, on which day, as also on the 11th of July, it appears that the claimant company wrote to Messrs. Dominici & Sons, a firm established in Barcelona—the date of the receipt of the letters not appearing—inclosing to them the bills of lading and requesting them to hand over to Messrs. Lanzoni, Martini & Co., after payment, the goods in question; and it was after this date that there first appeared before the customs officer at Guanta any one acting in behalf of the claimant company, when it was ascertained by such representative that the goods in question had a long time previously been delivered to the Messrs. Lanzoni, Martini

& Co., as above stated. It also appears that this latter company on then being addressed by these Venezuelan agents of the claimant company admitted that they had the goods and had used part of them and expressed their inability there to make payment, but that the debt would be cancelled on application to the company's office in Rome, Italy. These facts were duly reported by the said Dominici & Sons to the claimant company.

It further appears that the claimant company has made application both to the Barcelona house and the house at Rome of the Messrs. Lanzoni, Martini & Co. to obtain payment, and, failing to obtain such, instructed their agent in Rome to take legal proceedings in order to procure the money due them. The claimant company assert that they and their agents have used all reasonable means to obtain payment and have failed.

The laws of Venezuela concerning imported goods by the authority of the honorable Commissioner for Venezuela are as follows:

> The consignee is the importer of goods shipped abroad and bound for Venezuela. Within four workdays from the time the entrance visit has been paid each one of the importers of foreign goods must present the custom-house with the copy of the certified invoice, together with a manifest in duplicate drawn in the Spanish language, fulfilling all conditions required for invoices, and containing besides the total amount of bales and their value. * * * (Law XVI (Régimen de Aduana para la importación) of the Financial Code of Venezuela, art. 91.)

It is further provided that on the expiration of the four workdays fines are to be imposed, to wit: "For the first day later 100 bolivars, and 10 more for each following day," and if after sixty days the manifest is not presented the goods shall be treated as abandoned, and the public shall be informed fifteen days beforehand that the goods are to be sold to the highest bidder, if not claimed by the owners, and if at the end of such fifteen days the goods remain unclaimed they shall be sold at public auction with all due legal formalities, and from the moneys thus received the fiscal dues, fines, and other expenses shall be paid.

It follows, therefore, that when the Messrs. Dominici & Sons, agents of the claimant company at Barcelona, made their application to the customs officer, as hereinbefore stated, if the delivery to Messrs. Lanzoni, Martini & Co. had not been made and the law had taken its due and regular course these goods would have been sold at public auction, and there might not have been any sum remaining out of their sale. It is very improbable, in view of the nature of the goods and the lack of general local demand therefor, that there would have been any considerable sum paid for them at public auction, while the duties, the fines, and other charges would have reached a large sum.

So far as it appears to the umpire from the facts before him, the attention of the British foreign office was not called to the particulars of this claim until January 19, 1903, and it was not until the 11th day of April, that the Venezuelan Government was notified of these facts and their attention asked to the same.

From the testimony of Mr. Stephenson, the only sworn testimony in the case on the part of the claimant company, the umpire could have adduced but very few of these facts, and if his testimony had been taken literally by the umpire it would oppose some of the facts as found. But from all the testimony in the case, and largely from the testimony of the respondent Government, he has been able to obtain a connected history concerning the matters in question.

Upon the authority of the honorable Commissioner for Venezuela the umpire quotes another portion of Venezuelan law affecting the action of the customs officer:

When the importer should not receive the certified invoice, the custom-house will, on his written requisition, furnish him with a copy of the corresponding one received by it with the documents under cover and seal, so as to form the manifest.

In the judgment of the umpire the customs officer at Guanta was led into error, not unnatural, by Messrs. Lanzoni, Martini & Co., largely, if not wholly, through the fact that no one appeared acting on behalf of the claimant company, and therefore the statements of Messrs. Lanzoni, Martini & Co. that they were the importers in fact were easily given credence. The umpire is satisfied that the legal duty of the customs officer was to deliver the goods to the consignees or their lawful order only, and that in delivering the goods to anyone else except to the consignees, or their order, there was a clear mistake; but as this case turns in the judgment of the umpire upon other grounds it is not necessary to pass upon the responsibility of the Government of Venezuela for such mistake. The negligence of the claimant company and of their agents is in justice and in equity more important, and in the opinion of the umpire is in fact decisive. Upon the facts found in this case, had matters taken their ordinary and due course under the laws of Venezuela, there would have been none of these goods in the Guanta customs-house at the time of the first inquiry made thereat by the claimant company in the latter part of July, or early August, 1901. They would all have been disposed of lawfully at auction to the highest bidder, and out of the proceeds of such sale there would have been paid all of the legal charges of the Venezuelan Government connected with the importation, the warehousing, the advertising, the selling of the goods in question, and the legal penalties attaching to the delay. The most that could have been at that time in the hands of the Government would have been the remainder, if any, after satisfying these legal charges. In the judgment of the umpire there would have been no remainder. It is, therefore, inequitable to now claim of the respondent Government full payment for these goods which were lost wholly through the negligence of the claimant company. For, as the umpire has just stated, if these goods had not been delivered to Lanzoni, Martini & Co. they would have been sold under operation of Venezuelan law before the claimant company appeared at the custom-house through their agents Dominici & Sons.

From these facts the umpire holds that it was negligence on the part of the claimant company under all the facts in this case to not forward the bill of lading with the goods to a responsible Venezuelan resident agent, and that this negligence was the real and primary cause of the conditions which followed, and the least that can be said is that this negligence was directly and proximately contributory to the injuries complained of.

It was still greater negligence to allow more than three months to elapse before forwarding such bills of lading and securing local representation in its behalf.

Again, to justly and equitably charge the respondent Government with the official misconduct of its customs officer there should have been prompt notice to the Venezuelan Government of the claim for indemnity and the facts concerning the claim, so that the respondent Government, if otherwise liable, could have availed itself of its

remedy against Lanzoni, Martini & Co. (*a*) through subrogation, (*b*) through the bond of its custom officer, or (*c*) through the property of the customs officer himself; and to delay notice for two years after the happening of the event upon which the claim is based is in itself gross negligence on the part of the claimant company. Upon the theory of the liability of the respondent Government there was such remissness of duty toward it on the part of the claimant company as amounts to laches in justice and equity.

Negligence is:

The failure to observe, for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury. (Bouvier, vol. 2, p. 478, citing Cooley on Torts, 630.)

The absence of care according to circumstances. (Ibid.)

Such an omission by a reasonable person to use that degree of care, diligence, and skill which it was his legal duty to use for the protection of another person from injury as, in a natural and continuous sequence, causes unintended injury to the latter. (Ibid.)

The failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation, or the doing what such a person under the existing circumstances would not have done. (Ibid., citing 95 U. S., 441.)

See Bouvier under the head "Negligence" for further quotations.

Laches is:

Unreasonable delay; neglect to do a thing or to seek to enforce a right at a proper time; the neglect to do that which by law a man is obliged or in duty bound to do. Unlike a limitation, it is not a mere matter of time, but principally a question of the inequity of permitting the claim to be enforced; *an inequity founded upon some change in the condition or relation of the property of the parties.* (Bouvier, vol. 2, p. 101, citing as to the last part of the quotation 10 U. S. Ap., 227; 145 U. S. (Sup. Ct.), 386). (Italics the umpire's.)

It has been said to involve the idea of negligence; the neglect or failure to do what ought to have been done under the circumstances to protect the rights of the parties to whom it is imputed, or involving injury to the opposite party through such neglect to assert rights within a reasonable time. (Bouvier, vol. 2, p. 101.)

The case, therefore, in justice and equity, should be decided wholly without reference to the actions of the customs-house officer at Guanta, which action, under the circumstances disclosed in this case, could have done the claimant company no harm, and solely with reference to the relations which the claimant company bears to the situation in question.

It therefore becomes the duty of the umpire to disallow the claim, and judgment may be entered accordingly.

FEUILLETAN CASE.

In the absence of positive proof of payment of wages by the Government, after admitting an employment by it, and in the face of positive testimony that wages were not paid, the Government was held liable.

Interest allowed on amount due, but expenses of claim disallowed.

PLUMLEY, *Umpire:*

The Commissioners failing to agree, this case comes to the umpire for decision, and was considered and determined in the United States under the agreement between the two Governments permitting the same.

The claimant alleges that he took service as fourth engineer on board the Venezuelan gunboat *Restaurador* on February 27, 1901; that

on the 16th of May of the same year he was shipped by Venezuelan authorities on board the gunboat *General Crespo* to La Guaira, there to give evidence in the matter of an inquiry there being had concerning the second engineer of the first-named gunboat; that he arrived in due course at La Guaira on the 18th of May, and gave his statements concerning the matter named; that under instructions of Venezuelan authority he remained in La Guaira, and later he examined the gunboat *Rayo* and made report of her condition, and then, acting under orders, repaired the gunboat, and on the 15th of October of that year was transferred to the *Rayo*, serving regularly as third engineer until December, 1901; that then expressing a desire to leave the service he was put under arrest and forced to remain, and did remain, until the 27th of February, 1902, when he was released; that his salary under his first engagement as fourth engineer was 65 pesos monthly; that some time subsequently, while still serving on the *Restaurador*, he was raised to third engineer, at the monthly wage of 75 pesos, but the time when this advancement of wage took place is not stated. He claims that he went to La Guaira under orders and wages, but whether his wages were at 75 pesos, 65 pesos, or some other rate, he does not state. He does not state at what wages he acted as inspector and repairer of the *Rayo*, but he claims that his engagement as engineer of the *Rayo* was at the monthly wage of 60 pesos. For all these services he claims the sum of 492 pesos, alleging that he has never been paid any salary.

Aside from his own statement, he furnishes the evidence of one Manuel Flores, who states affirmatively and positively from his own knowledge that the claimant was sent to La Guaira and without having had his wages paid.

The respondent Government contends that the claimant held the position of fourth engineer only on board the *Restaurador;* that he served from the 27th of February, as alleged by the claimant; and that he remained on the *Restaurador* until the 31st of May following, when he deserted the service of the Venezuelan Government, and that nothing remained owing him for his wages.

It is further contended by the respondent Government that there was no action or inquiry had at La Guaira against or concerning the second engineer of the *Restaurador*, and that the allegation of the claimant that he was sent to La Guaira to make testimony in such cause was "simply a fable." It is further contended by the respondent Government that he was shipped on the boat *Rayo* by the first engineer of that boat, who unofficially employed him as his assistant; that he was paid by this person personally his wages in full during the time of his service on such boat, but that the sum agreed upon was 50 pesos monthly instead of 60, as alleged by the claimant; and that finally, for incompetency and apparent revolutionary sympathy, he was dismissed from the service. The respondent Government alleges that the claimant has been fully paid for all services rendered.

It is impossible from the statement of the claimant to know how much his wages should amount to, as he states two different prices during his service on the *Restaurador* without naming the time when the advance took place, and while claiming to be sent to La Guaira on wages, he does not state at what rate, nor how long such rate of wage continued, nor whether there was a differing price for the inspection and a differing price while he served as repairer, nor does he state whether he was under wages at La Guaira before entering upon the

duty of inspector and repairer on the *Rayo*. He does not positively assert that he was not paid the sum his due while waiting at La Guaira and while working upon the boat *Rayo* prior to his engagement as engineer thereon, although, as he makes no statement admitting a payment and makes a general assertion that he was not paid his salary, the fair interpretation of his several statements in this regard is that he was not paid any portion of his due and that he was under certain wages for the entire year.

The umpire finds it impossible to reconcile his statements concerning the time of his employment with the wages due as claimed by him. His wages on the *Restaurador* and up to the 18th of May, when he gave his testimony in La Guaira, as alleged by him, reckoned at 65 pesos a month, amounts to 170 pesos. His wages on the *Rayo* from October 15 to February 27, at 60 pesos monthly, as claimed by him, amounts to about 266 pesos, and the two sums united equal 436 pesos. If he be allowed 65 pesos until May 31, although there seems to be no reason for doing this unless all of his time while waiting is to be charged for, there would be an additional sum of about 26 pesos, making in all about 463 pesos. So much of this, however, is conjectural that it can only be used to show the impossibility of stating his claim in detail with any fair degree of certainty.

Taking the case upon the claim of the respondent Government that he served on the *Restaurador* from February 27 to May 31, at a monthly wage of 65 pesos, and we have substantially 197 pesos as the amount his due for such service. Since the service is admitted the burden rests upon the respondent Government to show by a fair balance of affirmative proof that recompense has been made. Unfortunately for the respondent Government, if their claim of payment is correct, they have not shown it by the statement of any person claiming to know it as a matter of his own personal knowledge nor by inspection of the vouchers or books which should show such payments, and those books and vouchers are asserted to be beyond the reach and without the control or possession of the respondent Government. There is proof that the Bank of Venezuela paid the salaries reported to be paid, but there is no proof that such report contained the name of the claimant for all or any part of his wages, but there is proof that the officers of the boat believed sincerely and so does the admiral of the navy, that such payment was made. However, against the positive assertion of the claimant and his witness, Flores, that no part of his wage was paid while on the *Restaurador*, the umpire fails to find the fact of such payment established, and therefore holds that the sum of 197 pesos and 13 centavos is due to the claimant for such services.

Without any positive claim as to his wage between the 31st of May and the 15th of October and with no supporting testimony of such service and with the impossibility of reconciling such a claim, if it is to be considered as made, with the amount claimed by him as the total sum due, the umpire does not find anything due the claimant for this intervening period.

From the 15th of October onward while engaged on the *Rayo* as engineer, the umpire feels better satisfied in his own judgment to accept the positive testimony of the engineer under whom he served, supported by the testimony of Commodore Pedro Thodo, that the claim was fully recompensed by the engineer himself by whom the the claimant was unofficially engaged, as the umpire finds the facts to

be. Unlike the case of the *Restaurador*, here the testimony concerning payment is explicit, positive, and of personal knowledge, and when opposed to the somewhat vague and quite indefinite general statements of the claimant are of convincing force and evidential value.

All of the claim not included in the services on the *Restaurador* to May 31 are disallowed.

The claimant is found to be a British subject.

Interest is allowed but expenses are disallowed, and the umpire finds the claimant is entitled to receive from the Government of Venezuela in full discharge of his entire claim the sum of £33 13s., and award will be made accordingly.

COBHAM CASE.

Claim dismissed without prejudice for want of sufficient proof, it appearing that claimant did not have the aid of skilled counsel in the framing of his evidence. Award made later for £100 by consent of Commissioners.

PLUMLEY, *Umpire:*

The Commissioners having failed to agree in this case it has come to the umpire for his determination.

The evidence shows two distinct instances of losses to property and injury thereto and of gross indignities toward and injuries of the person of the claimant.

Concerning the instance of October 26, 1902, resting upon the acts of Col. Guillermo Aguilera, Capt. Pedro Díaz, and their fifteen soldiers, constituting a part of the army of the revolution libertadora, it is impossible to charge responsibility upon the National Government against which these men were at war and over whose conduct it had lost all control. This part of the claim must be disallowed, in accordance with the umpire's opinion of justice and equity and in accordance with his previously expressed judgment before this tribunal. Cruel and unjust as such conduct must appear to all right-minded men, proper reparation is not to be found in mistakenly and therefore wrongfully charging it upon the Government.

Concerning the acts occurring on October 14, 1902, and testified to by H. Fischbach and Ramón Guerra and five others, if these were perpetrated by soldiers and officers forming a part of the army of the Government, it is to be regretted that such fact is not clearly in proof. The charges involved are all of too grave and compromising a character to be accepted without clear, definite, and convincing evidence. As the testimony stands it may or may not mean Government troops. The Government must not be held responsible for such a serious outrage on property and personal liberty by evidence in which upon this essential fact the language is distinctly ambiguous and indefinite. The injuries to the claimant were incurred in and because of his resolute efforts on behalf of his employer's property; and his personal bravery and his loyalty to his trust incite the umpire to give him all the protection within his power, and had he warrant therefor from the evidence he would be glad to award him ample indemnity. The ambiguity of the claimant's evidence in that part of it which names the troops who did the injury is such that it would not justify the umpire in making an award against the Government in his behalf. But it is

undoubtedly true that this evidence was prepared without the aid of counsel skilled in such matters, and it may be that it was intended to establish the fact that Government troops did the injury, and with tender regard for the claimant's rights in this matter, the umpire will exercise his discretion in his behalf and will dismiss that portion of the claim without prejudice in any particular to the claimant, and judgment may be entered in accordance with this holding.

CARACAS, *November 13, 1903.*

Upon further consideration of this case and upon the advice and consent of the Commissioners the umpire awards £100, and judgment may be entered accordingly.

DAVY CASE.

Venezuela is responsible for the acts of her civil officers, whether they in fact received their commissions direct from the National Government or indirectly and mediately through means and methods previously devised by the National Government for the care and control of the State, county, or municipality to which power had been delegated by that Government to make these appointments and issue commissions; and the National Government must respond in damages for the wrongful acts of such authorities, unless they be speedily and adequately punished for their offense.

The claimant is not bound to seek redress for his wrongs by a civil action in the local courts. He may have recourse to his own Government and that Government has a right to intervene diplomatically on his behalf.

PLUMLEY, *Umpire:*

In this case there was a disagreement on the part of the honorable Commissioners and it came to the umpire to be by him decided.

This matter arose in the spring of 1898 in the State of Bolívar.

In one of the municipalities of that State the jefe civil improvised a court, constituted a pseudo judge, and the two, under assumed authority, observing some of the forms of law, but with apparent malice, without just cause, and in disregard of law, subjected the claimant to most inhuman and barbarous treatment. After which through certain forms of law, but without lawful authority, he was taken into involuntary and laborious service, compelled to depart from his home, and to suffer great hardship for many weeks and to do and suffer all this without any compensation under an unfounded claim that he was working out his bail in the aforesaid unjust cause.

The claimant is a British subject and a skilled workman in the handicraft of a mason.

These unlawful and reprehensible acts performed under the color of authority and under a claim of representing the sovereignty of Venezuela were early reported by the claimant to the British minister resident at Caracas, and by said minister were very soon brought to the attention of the Venezuelan Government. It is to the honor of the respondent Government that from the first it has recognized the gravity of the offense and has not sought to palliate, belittle, or excuse it. President Andrade personally took up the matter and assured the British Government that criminal proceedings would be instituted and the guilty parties punished. In the correspondence which was had with the British minister resident at Caracas the President felt compelled to acknowledge the indifference of the local authorities to the case and in that way to explain the delay which had

ensued. When the history of Venezuela for the year of 1899 is considered it will not be deemed strange that the central Government was unable to give this particular matter the attention which unquestionably it otherwise would have received. It was in the spring of 1899 that President Andrade gave ample and ready expression of his settled purpose to bring the criminals to justice, but the history of 1899 reveals the reason of his inability to carry out his purpose in that behalf. When the national record of the past four years is read, it will not seem strange that this matter has not received attention. This lack of attention may well be placed to other causes than indifference to or disregard of the rights and wrongs of the claimant.

Before this Commission the honorable Commissioner for Venezuela urged the irresponsibility of the respondent Government for such acts as are here complained of, because of the Federal character of the Venezuelan Government and the limitations which thereby attach to national action. Such was not the position taken by the chief executive of the respondent Government when the question was being pressed diplomatically, and, in the judgment of the umpire, it is not well taken here. Internationally, the National Government is solely responsible for the proper safeguarding of the rights and interest of foreigners, resident or commorant, within its territory. No diplomatic relations exist except as between the respective nations as such. The responsibility in a given case being admitted the duties attaching must be performed, or satisfactory atonement made. Great Britain can not deal with the State of Bolívar. The national integrity of the respondent Government alone would prevent it. Hence the nation itself, in its representative character and as a part of its governmental functions, must meet the complaint and satisfy it. The Federal condition of Venezuela is freed from some of the embarrassing features concerning such matters which pertain to the United States of America as a nation. The United States of America was formed of States already organized, each independent, each sovereign. These States formally yielded to the nation certain of their sovereign rights, but reserved all those not especially delegated. One of the vexed questions in the home country of the umpire has been the line of demarcation existing between the two and in that regard the power of the nation to interfere with the internal policies of the several States. But in Venezuela the States are carved out of the national domain by the national will and formed in accordance with the national wishes. Certain rights and privileges are granted to these States by the central Government, while all not in terms granted, are necessarily reserved to and retained by the nation. It is not conceivable that it, in any part, abdicated its sovereignty over these several States in matters which affect its national honor and which concern its duties as a nation toward other governments. In the opinion of the umpire there can be but one answer to this proposition, which is that there is responsibility on the part of Venezuela for the acts of its civil officers whether they in fact received their respective commissions direct from the National Government or indirectly and mediately through means and methods previously devised by the National Government for the care and control of the State, county, or municipality to whom power had been delegated by the National Government to make these appointments and issue commissions. The creator of these methods and means of internal administration, viz, the nation, must always be responsible to the other government for the creatures of its creation.

It is also urged by the honorable Commissioner for Venezuela that the claimant should find his adequate remedy by civil action through the courts of Venezuela, directed against the man or men who had done him this harm. He had this right, without question, but in the judgment of the umpire he was not compelled to resort to the courts for his remedy. He had recourse to the Government of which he was a subject, there to obtain his relief through diplomatic channels. The Government of which he is a subject has a right to represent his interests diplomatically and where, as in this case, there has been an agreed submission of the claims of British subjects to a mixed commission created to consider them the tribunal thus constituted has undoubtedly jurisdiction of the parties and of the subject-matter.

It was also the opinion of the honorable Commissioner for Venezuela that the crime was fully atoned when the guilty parties had been prosecuted and punished—a fact which he confidently believed had occurred and of which he felt sure he could give satisfactory evidence before the tribunal. It appeared that preliminary steps had been taken looking to that end, and the evidence adduced at each preliminary inquiry is a part of the testimony used in this case. These preliminary steps had given the President of Venezuela knowledge of the wrong committed, the necessity of punishment commensurate to the offense, and the names of the offenders. The umpire has no question that the honorable Commissioner for Venezuela has been diligent in his efforts to obtain record evidence that there had been both prosecution and punishment of the guilty ones, but it has been without avail, and there is left to the respondent Government only one way to signify its regard for individual freedom, its abhorrence of such proceedings as are detailed in this case, and its desire to remove the stain which rests upon its department of criminal jurisprudence through the untoward and wicked practices of those who engaged in this conspiracy against the person and liberty of the claimant and the honor of their country. Too great regard can not be paid to the inviolability of the one and the sacred qualities of the other. The measure of damages placed upon such a crime must not be small. It must be of a degree adequate to the injury inflicted upon the claimant and the reproach thus unkindly brought upon the respondent Government. These invaded rights were in truth priceless, and no pecuniary compensation can atone for the indignities practiced upon the claimant; but a rightful award received in ready acquiescence is all that can be done to compensate the injuries, atone for the wrong, and remove the national stain.

If justification is sought through precedent for the umpire's conclusions, ample warrant therefor is found in Moore's International Arbitrations, volume 4, pages 3235–3266.

The honorable Commissioner for Venezuela will quickly differentiate between the case before the umpire and a claim based upon mistakes of law or fact or the lawful adaptation to the given person of very arbitrary and even oppressive laws. The case before the tribunal was a purely lawless proceeding under a certain color of law and legal authority and under certain forms of process, but wholly against the law of the land, and was a gross malversation in office and malfeasance by a civil officer, constituted such by the laws of Venezuela, and it is as much an affront to the honor of Venezuela as it is a deliberate indignity placed upon the claimant and an affront to the claimant Government.

The umpire finds the sum claimed in the memorial reasonable, and he adjudges that the respondent Government pay to the claimant Government as an indemnity on behalf of the claimant the sum of £1,000, and award will be made for that sum.

MOTION FOR ALLOWANCE OF INTEREST ON AWARDS FROM THEIR DATE UNTIL THEIR PAYMENT.

Under the terms of the protocol interest can not be allowed on the claims from the date thereof until they are paid.

PLUMLEY, *Umpire:*

His Britannic Majesty's agent before the British-Venezuelan Mixed Commission moved that interest be allowed upon all awards at the rate of 5 per cent. per annum from the date of the award to the date of payment, and supported his motion with an able argument. To this motion the honorable Commissioner for Venezuela opposed an able opinion. After careful consideration of the question, the honorable Commissioners finding themselves unable to agree, joined in sending the question to the umpire for his decision.

Interest eo nomine is by contract expressed or implied.

Both the claimant and the respondent Government quote Article III of the protocol to sustain on the one hand the claim for interest and on the other hand to deny it.

It reads as follows:

> The British and Venezuelan Governments agree that the other British claims, including claims by British subjects other than those dealt with in Article VI hereof and including those preferred by the railway companies, shall, unless otherwise satisfied, be referred to a mixed commission constituted in the manner defined in Article IV of this protocol, and which shall examine the claims and decide upon the amount to be awarded in satisfaction of each claim.

The learned British agent finds in this paragraph not only a warrant that interest may be awarded, but that it should be awarded in each case at a specified rate until date of payment. This right and duty to award interest is found by the learned British agent in the fact that the award is to be "in satisfaction" of each claim; that the date of payment of the award is uncertain and may not take place for many years; that "when the date of payment of a sum due in satisfaction of a debt is uncertain, it is an universally recognized principle that interest should accrue;" that if interest is not allowed from the date of the award to the date of payment "the Commission will not have satisfied the claim as required by the protocol."

He grants and claims that "the decision of this question must necessarily turn on the exact terms of the protocol constituting the Commission."

From the part of said protocol above quoted the honorable Commissioner for Venezuela finds, on the contrary, that the "powers of this Commission are merely and exclusively confined to awarding each claimant a determined sum" when their claims are found to be just. He also relies upon the terms of the protocol, and not only fails to find therein the warrant for the allowance of interest on awards by the Commission, but holds further that "the clear and precise terms of the protocol bar all discussion on this point."

It will be observed that the Commission is not authorized or permitted to name the time when, the manner by which, or the means through which the award is to be satisfied or paid. Examination of the protocol will show that elsewhere therein the high contracting parties have themselves provided for all this and for security as well. As to a certain class of claims, there is an agreement as to the amount due in satisfaction. In Article III, however, it is agreed that there is a question to be submitted to arbitration, which question seems to be, What, if anything, is the amount due to the claimant from the respondent Government on the account as presented? A mixed commission, to be provided for in the next succeeding article of the protocol, "shall examine the claims and decide upon the amount to be awarded in satisfaction of each claim." Have the commissioners, by the terms of the submission, anything to do with the satisfaction of the *award?* Are they asked to consider anything but the quality of each claim, and, if allowed at all, to decide upon the amount which will satisfy it? Is not the word "amount" sufficient in its use? What the claimant Government asks by this motion is that this Commission settle the amount which satisfies the justice of the claim, and also fix a rate of interest which shall attach to that amount, and follow it until the award itself is satisfied by payment, and that an agreement to this effect may be found—nay, is found—in the language quoted, when considered, as all parts of a treaty should be, in reference to all other parts thereof.

Amount. 1. The sum total of two or more sums or quantities. The aggregate, as the amount of 7 and 9 is 16; the amount of the day's sales.
2. A quantity or sum viewed as a whole. * * *
3. The full effect, value, or import; the sum or total; as, the evidence, in amount, comes to this. (Century Dictionary, Vol. I, p. 191.)

It would seem that amount, as it is used in the provision quoted in the protocol, means, and only means, a certain round sum to be awarded in satisfaction of the *claim*, which in itself may include the original sum and interest thereon to the time of the award. The whole question of satisfaction of the award is provided for elsewhere in the protocol. If interest is to be allowed on the basis of a contract, the intent of the high contracting parties to so contract is the thing sought, and it must be gathered, if found anywhere, primarily and principally in the foregoing quotation taken from the protocol. Both claimant and respondent Governments so agree. And the claimant Government makes no reference to any other part of the protocol, resting their claim for interest solely upon said quotation. But do not the provisions of the protocol, as found in the language quoted, limit the action of the Commission to an examination of the claim and a determination of the certain amount in pounds sterling to be awarded the claimant? Is there to be found in the other parts of the protocol, or in the facts leading up to it and surrounding it, or in some interpretation put upon it by both parties, that which will control the quoted provision and so enlarge its scope as to render it consistent with the position of the learned British agent? It seems to the umpire that the other parts of the protocol show a purpose and plan on the part of the two Governments to settle all details for themselves, excepting the claims submitted in Article III, and by and for themselves to settle the means of payment thereof and the security therefor. It would seem to the umpire, from a careful reading of the protocol, that the only question left open for the determination of the Commission was the question of

the claims themselves, and that concerning these claims, they were to determine whether in justice and equity there was anything due and, if so, how much; and, if he were obliged to determine the question unaided by reference to collateral facts or by the use of other proper means, he would be obliged to hold such to be the rule. Will examination of the facts leading up to the protocol and collateral with it remove or more firmly establish this belief? This is to be seen.

In the British Blue Book for 1903, under date of December 18, 1902, page 178, in an extract from a communication of the Marquis of Lansdowne to Sir F. Lascelles, it is said by the marquis that the—

court of arbitration will have to decide both on the material justification of the demands and of the ways and means of their settlement and security.

The Hague Court of Arbitration, and not a mixed commission, was the proposition then under consideration, which distinction is uniformly observed throughout the correspondence between the British Government and the German Government and between the British Government and their officials.

On page 182 of said book there is a communication of the British Government to the United States embassy, where, in paragraph 3 of said communication, it is stated—

the arbitrator will have to decide both about the intrinsic justification of each separate claim and about the manner in which they are to be satisfied and guaranteed.

In this communication the President of the United States or The Hague tribunal was the arbitrator referred to.

On page 183 of said book is found a memorandum of a communication made to Mr. White, December 23, 1902, and paragraph 3 of the reservations contained in said memorandum has this:

It would, in the opinion of both Governments, be necessary that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation.

In this communication it was understood that either the President of the United States or The Hague tribunal was to be the arbitrator, and it was expected and required of them that they should determine, settle, and provide for these additional propositions.

There is a draft of a letter to the American ambassador at Berlin, found on page 191 of said book, in which the position of the German Government is stated and previous communications are referred to. In the closing part of said letter there is found this language:

Besides which he (President Castro) must especially make clear in what manner he intends to pay the demands contained in that memorandum or to give security for that amount.

On page 208 of said book, number 233, the Marquis of Lansdowne, in a dispatch to Sir Michael Herbert, after referring to other conditions previously named to the ambassador at Washington, makes in the last paragraph this statement:

The question of guaranties for the satisfaction of the remaining claims would also have to be carefully examined, and we were engaged in preparing instructions to you upon these and other points.

From these extracts and, better still, from a careful reading of the entire correspondence contained in said book, it will be seen that the final adjustment between the allied powers, and more especially between

Great Britain and Venezuela, was a matter of careful consideration, made especially apparent by the very systematic use of similar language in different communications, from which may be deduced the fact that the protocol itself is in structure and language a work of much care and thought. A careful reading of all the communications contained in said Blue Book will disclose no reference, direct or indirect, to the question of interest, or to compensation for delay in payment, while there is constantly presented a requirement as to the means of payment, and, if payment is not to be made at once, of adequate security therefor. A return to the protocol itself will show in the preamble, "Certain differences have arisen between Great Britain and the United States of Venezuela in connection with the claims of British subjects against the Venezuelan Government." Article I of the protocol provides, among other things, that the Venezuelan Government recognizes "in principle the justice of the claim," etc. Article II of the protocol provides that "The Venezuelan Government will satisfy at once, by payment in cash or its equivalent," certain classes of claims, and then comes Article III, which provides for the submission to a mixed commission of the class of claims which have been brought before us for an examination and decision as to the amount to be awarded in satisfaction of each claim.

In the instructions from the Marquis of Lansdowne to Sir Michael Herbert, No. 234 of Blue Book, January 13, 1903, on page 212, there appears this statement:

> Other claims for compensation, including the railway claims and those for injury to or wrongful seizure of property. * * *

And, near the top of the page—

> His Majesty's Government will be ready to accept in satisfaction of these claims either a sufficient cash payment or a guaranty based on security which must be adequate, and which the Venezuelan Government must be bound not to alienate for any other purpose.

Further proposing that—

> Before the amount to be actually handed over to claimants of this class is finally decided, a commission, upon which Venezuela would be represented, should be appointed to examine and report upon the amount to be awarded in satisfaction of each claim. * * * Should a cash payment have been accepted by His Majesty's Government, they will be prepared to refund any surplus which may be available after the examination.

It appears from this instruction that when a mixed commission was under consideration it was to follow a settlement on the part of Venezuela either by a gross sum paid to great Britain, which was by that Government estimated at £600,000, or, if not paid at once, the other alternative was a satisfactory guaranty; and in either case it was agreed that an examination of the respective claims for the purpose of fixing the amount due in each claim should be made by a mixed commission; and it was not proposed that they should possess any other power and there was no other duty to rest upon them, except to settle the amount of each claim, which amount, naturally, would be the same whether it was to be paid in cash or was to be adequately secured. This is brought out again in the recapitulation made in this same set of instructions, beginning at the bottom of page 212 of said book:

> (*b*) Other claims for compensation, including the railway claims and those for injury to, or wrongful seizure of, property, must be met either by an immediate payment to His Majesty's Government or by a guaranty adequate, in your opinion, to secure them. These claims can, if this be desired, be examined by a mixed commission before they are finally liquidated.

There is no suggestion here as to any power given to, or any potency in, the Commission, except that of examination of the respective claims, in which they were to determine whether the claims were just and equitable, and, if so, to settle the amount. To The Hague tribunal and to the President there were to be given other powers which were to be asserted by them in lieu of the agreement concerning such matters which was effectually made between the allied powers and Venezuela. The President declined to act, and an agreement was finally concluded in which there was an unalienable right given by Venezuela to the powers in and concerning the customs duties received at the two principal ports of Venezuela, so that the alternative proposed, if cash was not immediately paid, was in fact settled in the protocol.

There is another important factor to be considered in arriving at the question of whether interest was in the mind of either of the high contracting parties. Examination of the Blue Book shows that the Marquis of Lansdowne insisted, in association with the other allied powers, that there should be given them preferential treatment over the peace powers in the payment of their claims out of the 30 per cent of customs to be set aside for their liquidation.

Mr. Bowen insisted that Venezuela must give similar treatment to all creditor nations. In connection with the discussion that took place in reference to this question of preference see No. 241 of Blue Book, page 219, of date January 25, 1903, when the Marquis of Lansdowne was informed by Sir Michael Herbert of the anticipated annual income of the two ports of La Guaira and Puerto Cabello, which was set by him at 10,000,000 bolivars, while 29,000,000 bolivars was considered to represent approximately, the claims of the peace powers. In the Marquis's reply of January 26, 1903 (Blue Book, 219), he reduces this income to pounds sterling, and finds 30 per cent to be, approximately, £213,000. He estimates the claims of the blockading powers at £900,000, and puts the claims of the peace powers in pounds sterling at 1,148,574. He then proceeds to deduce from all these facts, that there could be an arrangement to extinguish the claims of the allied powers in five years, and that this could be done without injuriously affecting the interest of the other creditor powers. The thought of the Marquis of Lansdowne is expressed definitely in No. 254, page 222 of the Blue Book, in his interview with the German ambassador, January 29, 1903.

The German Government had stated that this 30 per cent, in their judgment, should be set apart for the sole purpose of liquidating the claims of the blockading powers; but they were informed by the Marquis of Landsdowne that it seemed worthy of consideration—

> Whether, if the part of the customs revenues was appropriated, not for the satisfaction of the claims of all the creditor powers, but for that of the British, German, and Italian claims alone, we might not be content with rather less than the full 30 per cent referred to. It seemed to us that the allocation of an annual sum sufficient to extinguish our claims in, say, six years, might be enough for our purpose, and we had instructed Sir M. Herbert to discuss the question with his German and Italian colleagues.

Again in No. 256, February 1, 1903, Blue Book, p. 223, in his instructions to Sir Michael Herbert, the Marquis of Lansdowne says:

> An arrangement by which the claims of the blockading powers should be extinguished in six or seven years would, we believe, leave it possible for a *similar settlement* to be made with the *other powers*.

It must be borne in mind that the 30 per cent of the customs revenues of these two ports was the one sole guaranty and means of payment proposed, and it was definitely understood that no better, or other, could be, or would be, offered; and the entire discussion relative to preferential treatment was concerning payment out of the fund thus to be obtained. This may be seen by reference to the Blue Book and the different communications found therein.

To extinguish £900,000 in six years would require £150,000 each year; this would leave £63,000 each year to apply on the claims of the peace powers, aggregating during the six years £576,000, and reducing the claims of the peace powers to £770,514 at the end of the six years. Then with the full £213,000 to be applied each year it would require three years and a half for their complete liquidation, or about nine and a half years in all. Add interest, however, at 5 per cent to the £900,000 and the first year's payment to the allied powers would be £195,000, leaving £18,000 to apply on the claim of the peace powers. Their interest would be £57,423, and hence there would be an increase in their claims that year of £39,425. Carry this same plan throughout the six years, lessening each year the amount of interest on the claims of the blockading powers, and increasing each year, by so much, the amount to apply on the claims of the peace powers and the result would be, that, when the six years had ended, the debt to the allied powers would have been paid, and there would be an increase on the part of the claims of the peace powers of £59,125, so that their claims at that time would be brought up to £1,207,639. Can this situation be reconciled with an intelligent proposition by an intelligent statesman, that the allied powers could be paid off in six years, and substantially *similar* treatment be given the peace powers, and *all* out of the 30 per cent? A situation that actually increased the indebtedness of the peace powers during the entire time in which the allied powers were being paid. It would seem impossible to reconcile such a statement.

As another test, take the hazard that the customs receipts permanently fall off just one-half, and that the debts aggregate as estimated £2,048,510. The interest at 5 per cent would be sufficient to exhaust the entire income and the debts would *never* be paid. Is it possible that these able Governments regarded the proposition to set aside these customs receipts as any kind of security if the reduction of one-half thereof would take away all possibility of payment? Again, when the umpire reached Caracas in the spring of 1903, he found that intelligent residents of the city were fearing that the aggregate allowance by the Commissioners would be £5,000,000. Were that to prove true and the income remain at £213,000, and interest was to be allowed at 5 per cent, the indebtedness would increase at the rate of £37,000 each year. With the interest factor in, there is all this uncertainty and possible permanent unliquidation. With the interest factor out, there is a sum constant each year in some amount to reduce the indebtedness and a certainty of final liquidation.

Again, if the very high rate of interest named (high in connection with a secure government indebtedness) had been understood as pledged, would either party to the submission at The Hague have involved itself in the trouble and large expense, in the aggregate, to determine which should be obliged first to let go of so good an investment?

Again, when the Marquis of Lansdowne was suggesting that a part of the 30 per cent would answer the demands of the blockading

powers and that a part thereof would be sufficient to wipe out their indebtedness in six years, what fraction of the 30 per cent did he have in mind? Without interest, in such case there would be reserved to the allied powers approximately 21 per cent, and there could be tendered to the peace powers 9 per cent during each of the six years. With interest, the allied powers would the first year absorb 27½ per cent, and there would then be 2½ per cent for the peace powers, with the actual final result suggested that the peace powers would have their indebtedness increased during the six years. While the proposition of 21 to 9 was not of such a character as to offend the other powers, allowing the standpoint of the allied powers to be taken or not, the other proposition could not have been offered or received with dignity, and it is impossible to conceive that it was in the mind of so eminent a gentleman as the Marquis of Lansdowne.

Although the time of payment is not in terms expressed, a certain method of payment, with security, is devised which begins liquidation at once and concludes in from six to ten years according as the claimant Government is or is not a preferred creditor, as it assumes to be. These awards are substantially in that class of debts where by the agreement an option is granted to the debtor to pay on or before a certain time. It is also a secured debt, which quite frequently appeals to a creditor as superior to an unsecured debt bearing interest. Preceding the protocol, the claimant Government insisted upon an immediate cash payment or satisfactory guaranties. It was given the guaranty. The two Governments, on their own part, made every provision for payment and security and left only to the Commission the examination of the claims presented. To examine and, if allowed, to award upon the claims presented the amount due thereon is the apparent power given to the Commission. In the judgment of the umpire there is no power inherent in a mixed commission to affix interest to the awards beyond the life of the Commission. The recovery of interest on the judgments of a court is a matter of statute, as understood by the umpire. Interest only follows the judgment if so provided by statute. (Thompson *v.* Monrow, 2 Cal., 99; 56 Am. Dec., 318.) If such power is to exist it must be by grant from the parties who created it; and if the awards are otherwise to draw interest it is from other source and other cause than a naked order of the Commission.

In the Claims Commission between the United States of America and Venezuela, under convention of April 17, 1867, the treaty provided that—

> semi-annual interest shall be paid on the several sums awarded at the rate of 5 per cent per annum from the date of the termination of the labors of the Commission. (Moore's Int. Arb., vol. 5, 4810.)

Similarly for the Mixed Commission between the same countries, under convention of December 3, 1886, the same rule as to interest on awards was provided in the treaty. The said treaty also recognized the propriety of allowing interest on the claims, when they were of a proper character. In the American and British Claims Commission treaty of May 8, 1871 (Moore's Int. Arb., vol. 5, 4327), there was, ordinarily, an allowance of interest at the rate of 6 per cent per annum from the date of the injury to the anticipated date of final award. Examination of that treaty will show a corresponding silence on the question of interest on awards, with the protocol under consideration. The United States and Mexican Claims Commission, under convention

of February 1, 1869, had very able members as Commissioners, and as umpire during the latter part of the sittings Sir Edward Thornton, who, in the closing part of his labors, passed upon this question of interest, but allowed it only from a certain specific time up to a date usually described as the date of final award. (Moore, vol. 2, 1317–18.)

In the United States and Mexican Claims Commission, under convention of April 11, 1839, the question of interest was disposed of similarly. (Moore, vol. 4, 4325.) Between the same parties, under the act of 1849, interest in the particular case referred to on page 4326 of Moore is denied for the reason given, and in the Spanish Commission of 1871 (Moore, 4327) interest was denied.

It will be noted that in article 6 of the treaty of December 5, 1885, between the United States of America and Venezuela it was especially provided that—

> In the event of interest being allowed for any cause and embraced in such award, the rate thereof and the period for which it is to be computed shall be fixed, which period shall not extend beyond the close of the Commission.

In the convention for the arbitration of the claims of the Venezuela Steam Transportation Company of January 12, 1892, article 5 of the treaty provided that—

> If the award shall be in favor of the United States of America, the amount of the indemnity, which shall be expressed in American gold, shall be paid in cash at the city of Washington, in equal annual sums, without interest, within five years from the date of award.

In the case of the Peruvian indemnity fund left with the Attorney-General of the United States to distribute he held that—

> The charge for interest is rejected, it being incompatible with the principles which appear to have been adopted by the two Governments in concluding the convention.[a]

In the preliminary provision made for the settlement of the civil war claims, so called, immediately between Great Britain and the United States of America, it was especially set out that each Government was required to pay the amount awarded against it within twelve months after the date of the final award, *without interest.* (Moore's Int. Arb., vol. 1, 690.)

In the Chinese indemnity cases found on page 4629 of Moore, 12 per cent interest was allowed to a certain date, covering in most cases the period of three years, and they were induced to give this liberal rate—

> by consideration of the fact that some time must elapse before the complete collection of the indemnity through the Chinese custom-houses could be effected; and they intended to make their awards the final settlement of the question of interest.

In the matter of indemnity for slaves between Great Britain and the United States of America, there was a claim for damages of the nature of interest on the part of the United States against Great Britain. On page 375, volume 1, of Moore, begins the discussion of this claim on the part of Great Britain, and the opposition is divided into three parts:

> (1) Principles of justice and equity; (2) the authority of precedents; and (3) a reasonable and necessary construction of the convention.

And it is urged under the last head, that if the convention intended the creditors to receive damages as well as the value of the slaves—

> it was inconceivable that the power should not have been given to the Commissioners to ascertain by evidence the amount of such damages; and if it was intended

[a] Moore, vol. 5, p. 4595.

that interest should be arbitrarily fixed upon as the standard of damages it was equally inconceivable that the convention should have been silent upon the subject.

It is argued that in the convention between the United States and France of September 30, 1800,[a] there was an express provision for interest, and a similar stipulation in a subsequent treaty between the same parties,[b] and, from these facts, that whenever, in a treaty, the United States meant to stipulate for interest, they took care to include an express provision to such effect. There are other references of a similar character which might be made to Moore, but the umpire forbears.

Where it has appeared that there were objections to interest in the cases quoted, the objection has been to interest on the claims then before the Commissioners. The question of interest on awards to time of payment was not the matter then under consideration.

The Geneva tribunal, from the magnitude of the questions at interest, the quality of the countries involved, and the high character of the agents of the respective governments and of the arbitrators as well, occupies a position of unique importance among even the great arbitrations of the past. That the Geneva tribunal allowed interest on the claims but did not allow any interest to attach to the award, the umpire considers very significant.

The umpire believes it to be safe to hold that this Commission has no power not directly conferred upon it by the protocol.

Interest *eo nomine* is a matter of contract. The protocol, the contract in question, does not in terms provide for interest. Neither does the language used import interest; nor is it to be implied from the language used. (16 American and English Encyclopædia of Law, 999; III. Grounds of Allowance of Interest, and notes 2, 3, 4, and cases therein cited; Ib., IV. Contracts to Pay Interest, and notes 8, 9, 10, and cases therein cited; Ib., p. 1001, subhead 4, Construction, (*a*) in General, and notes 2 and 3, and cases there cited; Ib., 1002, subhead 3, Implied Contracts, (*a*) in General, and note 1 on p. 1003, and cases there cited.)

Upon the question of an implied contract and as aiding in determining the question of interest, it may be well to remember that the general practice of nations in cases of submission to arbitration has not been to provide for interest on the awards until date of payment; that to so provide is quite the exception.

There is to be considered also the general rule that nations do not pay interest except when especially written in the contract. Lawrence says in Law of Claims against Governments, etc., page 218:

> Upon ordinary claims the Government is not liable for interest unless by contract so providing. (See note 78 on same page and following pages.)

The force of this general rule is to negative any implied contract between nations to pay interest where there is an agreement between them and nothing is said about interest. (16 American and English Encyclopædia of Law, 1005, subhead Implication Negatived and note 3, and cases there cited; Ib., 1005, subhead (*b*), Knowledge of Custom, and note 5 and cases there cited.)

Damages are sometimes assessed for delay of payment or detention of property at the rate and of the nature of interest, but there is here no default to be considered, and there will not be if the respondent

[a] Treaties and Conventions between the United States and Other Powers, p. 322.
[b] Ibid., p. 356.

Government in good faith carries out its terms of payment, even if it takes many years to liquidate the indebtedness. (16 American and English Encyclopædia of Law, 1007, subhead (*b*) Express Contracts to Pay Money, (1) In General, and note 4 and cases there cited; Ib., 1013; Ib., 1014, subheads (*a*) and (*b*), notes 5 and 6, and cases there cited; Ib., 1015, note 2, and cases cited.)

As bearing upon the wisdom, propriety, or value of an award of interest to attach and to follow the award, where such an order is not sustained by the clear language of the convention constituting the Commission, and as bearing upon the question of jurisdiction in the Commission to make such an award under such circumstances, the consistent and practically concurrent action of the many commissions composed of distinguished bodies of men, there is great significance in the almost prevailing and constant practice of the rule not to allow interest. Indeed, the umpire has been unable to find a single instance where under substantially the same terms of submission as are contained in the protocol under consideration there has been any such allowance of interest.

The award of the Mixed Commission in respect of British mineral oils claims in France of 1874, produced by the claimant Government as an authority for its motion, does not disturb this proposition of the umpire. The terms of that submission were—

> To settle, as hereinafter directed, questions concerning duties levied in France on British mineral oils, *as well as to consider and report on any other questions which the high contracting parties agree or shall agree to refer to it*—[a]

and, if the umpire reads correctly, interest was only allowed by this Commission in cases where judgments had been pronounced, and for the purpose of meeting the terms of those judgments.

It must also be regarded as of importance that all of the other commissions sitting in Caracas at this time have failed to allow interest on awards—some, probably, because it was not asked for; in others, because it was directly denied as being beyond the power given by protocols. This not only adds the weight of the judgments of the many eminent men who have thus passed upon this question, but throws into the discussion of the question certain features of inequity in case it should be allowed to one only of the claimant Governments. Especially is there force to this thought in connection with Germany and Italy, who, with Great Britain, formed the blockading powers and claim preferential treatment out of the common source provided for the liquidation of all claims. They are to be paid in parts proportionate to the amounts of their respective awards, and it is not equitable that Great Britain should have profit in a 5 per cent dividend on awards for six years' delay in payment, while Germany and Italy are delayed equally, but without recompense, and the date of the final payment to them be deferred still further because of the increased burden placed upon the common fund by reason of such interest. If the protocol plainly required such an inequity to exist between these two parties the umpire would have no alternative but to make the allowance. These deductions bear largely upon the question of the probable intent when the result of a certain line of action is being considered, and it prevents a judgment, where in the discretion of the umpire it might be allowed if it would produce equity, when in fact it would produce inequity.

---

[a] British and Foreign State Papers, Vol. LXIII, p. 211.

As the result of all this consideration the umpire is not satisfied that he has any warrant or authority under the protocol to favorably entertain the motion of the learned British agent in the matter of interest on awards until payment, and he therefore denies the motion.

INTEREST ON DIPLOMATIC DEBT CASE.

Venezuela held liable for interest at legal rate on ascertained liquidated amounts acknowledged by her to be due.

PLUMLEY, *Umpire:*

The honorable Commissioners having failed to agree upon either class of claims presented by the memorial in this case, it comes to the umpire for his determination.

The memorial calls for simple interest at the rate of 6 per cent on two classes of claims.

Class 1 is claims agreed to by the Venezuelan minister for foreign affairs and Her Majesty's representative at Caracas, Mr. Edwards, in 1865.

Class 2 is awards made by the Mixed Commission constituted by the Anglo-Venezuelan claims convention of the 21st September, 1868.

I.

The British Government has always claimed of the Venezuelan Government interest at the rate of 6 per cent as an integral part of the claims under class 1; but the umpire fails to find that the respondent Government ever formally consented to the payment of any interest until the decree of May 23, 1876, when, as the umpire understands it from the information in hand, 3 per cent bonds were proposed by Venezuela in payment of these agreed claims and also in payment of the awards made by said Mixed Commission. This proposition the British Government declined to accept, but has always insisted that interest at 6 per cent was their due on both classes of claims.

In the opinion of the umpire the claim for interest can not stand upon a contract either expressed or implied, because he fails to find such a contract, and, if allowed, it must be as damages for undue and unreasonable delay in payment, and for default of payment, in the manner and by the means proposed for liquidation when the claims of this class were merged into a stated sum by agreement between the two nations.

The umpire finds that there was an agreement to appropriate for the payment of this stated sum "the proportional sum appertaining to the British claims of the 10 per cent of import duties assigned for that purpose by the law of estimates of public expenditure." The sum thus stated and agreed upon between the two nations was $247,935.60. In the year 1869, $12,229.85 was paid presumably in accordance with this arrangement as to the share of Great Britain in the percentage of customs duties set apart for debts of this character.

By a decree of the 23d of May, 1876, this stated sum of $247,935.60 was approved by the Venezuelan Congress; but nothing more was paid until 1885, when $2,784.75 was paid, and thereafter each year, by

successive installments, the debt was gradually reduced, and in 1897 it was wholly extinguished.

From the expressions used in the correspondence between the two Governments the umpire finds that it was understood by both of the high contracting parties that this debt was to be liquidated within five years from the date of said agreement; and he fails to find any agreement between the two Governments, or any consent on the part of the British Government, to any further extension of the time of payment. Whether the means proposed by which payment was to be made would have liquidated the entire sum in five years the umpire has no means of knowing, but that such was the expectation of the Venezuelan Government is clearly manifest from the language of its minister of foreign affairs when he urges for the consideration of the British minister at Caracas that interest ought not to be required on the sum then agreed upon because, among other reasons, France had accepted a settlement of her claims in which settlement there was an agreed delay of five years before final payment and no interest was exacted. There could be no significance to this argument on the part of the honorable minister for foreign affairs if it were not in the mind of both the representatives of their respective Governments that this particular debt was to be liquidated in less than five years. In the absence of any specific understanding a reasonable time for payment would be the implication of law; and whether default is found in failure to liquidate within the five years as the agreed time, or in the failure to pay any considerable part of said sum within twenty years from the settlement, it makes but little difference, for it is impossible not to find that this long delay has far exceeded the contemplation of either of the high contracting parties. Placing the ground for interest on the unreasonably long delay in payment, it becomes necessary to fix the time at which interest for that cause should begin. It is the belief of the umpire that the respondent Government will not regard it a harsh conclusion to set the time for payment on the same day when they first recognized their duty to pay and paid over their first installment on this account. This was in the year 1869.

As has already been said, allowance for interest on the claim must be for the default of the respondent Government and for the undue detention of the sum agreed to be paid to the claimant Government by the respondent Government. Under Venezuelan law, until 1873, contractual indebtedness bore interest at the rate of 6 per cent after default. Neither Government can complain if, until 1873, that rate is adopted here, the first charge for interest beginning at the close of 1869. The amount for the five years 1869 to 1873, both inclusive, is $70,711.70. Some time in the year 1873 the statutory rate under such circumstances became 3 per cent; and there is no hardship to the claimant Government that, in the matter of a pure money indebtedness, it should stand on a par with the claimants whom they then represented. If these claimants had recovered their indebtedness before Venezuelan tribunals they would have been limited to 3 per cent. Venezuelans are so limited.

(See 16 American and English Encyclopædia of Law, p. 1052, subhead 3. Rate as damages. *a.* General rule; legal rate: "When there is no contract for interest, and interest is given as damages strictly, the general rule is that the legal rate is recoverable." See note 3 and cases there assembled.)

The legal rate changing, the rate to be used must be changed to conform. (Ib. 1062. *c*. Interest recoverable as damages. See note 5 and cases there cited.)

The place where the contract is to be performed—i. e., the place where the money is to be paid—governs the interest to be allowed. (Ib. 1088, subdivision *b*. See note 5 and cases there cited.)

When interest is given as damages the law of the place of performance governs. (Ib. 1090, subhead 2. Interest as damages. See note 2 and cases there cited.

Aliens should be content with the commercial laws of the country in which they are located by choice, for business or other reasons. If they should be content, so should the government of whom these aliens are subjects. Venezuela can not be asked to offer a prize or pay a premium for alien claimants through their governments.

It consorts with the umpire's idea of justice and equity to permit the legal rate in Venezuela to determine the rate recoverable before this tribunal in cases of this character. It follows, then, that beginning with 1874 and continuing until 1897, both inclusive, the allowance for interest is placed at the rate of 3 per cent, or one-half of the sum claimed. This amounts to $120,850.77. Add to this the sum allowed from 1869 to 1873, inclusive, $70,711.70, and the whole amount under this class is $191,562.47.

Aside from the reasons which have thus far been stated there is the same or greater reason in justice and equity for allowing interest on this claim that there has been to allow it in the other cases before this tribunal. The allowance of interest for damages to property, or for contractual claims, considered by mixed commissions has been for a long time a well-settled practice with a large degree of uniformity. So far as the umpire is aware it has been the unquestioned action of all the mixed commissions sitting in Caracas in 1903. It has been the settled practice of this tribunal, where justice and equity seemed to require it. The claim now being considered is in effect an account stated between the two Governments and has a much stronger ground for allowance of interest after default than a claim not agreed to.

The one serious ground of weakness in this claim is that there has been an entire liquidation of the principal sum, or capital, and it is a rule of practically universal application in the courts that where interest is incidental only, as damages for a breach of the contract, payment of the principal ipso facto operates to defeat a demand for interest.

As this same question appears in the same way and must be given the same effect in the claim for interest on awards, discussion and determination thereof will be reserved until after consideration has been given to the other points in the second class of claims.

II.

It was especially provided in the protocol constituting the Mixed Commission of 1868–69 that the awards were made to receive "full effect without objection or delay." But there was also a stipulation in the protocol that the awards of the said Commission, together with the convention itself, should be submitted for approval to the Venezuelan legislature. Because of the revolutionary condition of Venezuela for the next three years this provision could not be carried out until 1873, when a decree of date the 14th of June approved both the convention and the awards.

It is certainly a matter of serious doubt whether, until such decree, the awards made by the Mixed Commission could be regarded as settled and fixed beyond all question. As has been stated, this action was taken by the Venezuelan Congress as soon as it could be done, in consideration of the unfortunate condition of the country during the period intervening. It is the opinion of the umpire that in all these matters up to and including the ratification of the convention and its awards the Venezuelan Government acted in the utmost good faith, without purposed or willful delay and without actual default. Had the Venezuelan Government then provided for an early payment of the principal sum, in the opinion of the umpire, there could be nothing claimed of Venezuela by the British Government under this part of the memorial; but this was not done.

The conditions here are decidedly different from those attending the protocol of February 13, 1903, and the awards made thereunder. In the latter case the signatory parties agreed in the protocol (*a*) to constitute a mixed commission and settle the several amounts due; (*b*) to provide a specific way for payment out of a certain definite class of Venezuelan income necessarily entailing by its terms a delay of some years before final liquidation. All this is a part of the protocol creating our Mixed Commission.

In the present case now under consideration the protocol creating the Mixed Commission required the ratification above referred to, but provided in effect that when the awards were made and the ratification had there should be given full effect to said awards "without objection or delay." No objections were made. In fact, in everything, the conduct of the Venezuelan Government was so scrupulously regardful of the terms of the convention that it is forced upon the umpire, and must be apparent to all who carefully consider the question, that failure to meet the award with ready payment was solely because of their straitened financial condition resulting from the drain upon their finances through the revolutions which had directly preceded. The umpire understands it to be an admitted fact that Great Britain never acceded to any delay and never consented to any installment method of payment except through allowance of interest to compensate therefor. On September 4, 1873, the Venezuelan Government was informed by the British representative at Caracas that the sums awarded the British claimants under the convention of 1868 had been apportioned among them with interest from the date of the awards at the rate of 6 per cent per annum. To this the Venezuelan Government demurred; but it has always been insisted upon on the part of Great Britain, and the Venezuelan Government is presented with no new claim in the memorial now before this tribunal. The whole amount awarded was $312,586.95. The first payment was made in 1873 and there were annual installments thereafter, omitting the year 1879, until 1885, when the last installment was paid and the principal or capital sum was extinguished.

It is the belief of the umpire that this delay constituted a default on the part of the Venezuelan Government; that it was not in accordance with the spirit and purview of the protocol to thus defer the final liquidation of the awards.

This default was not from choice or purpose but from necessity. Nevertheless among individuals similarly situated if one should from necessity withhold the money of another he is on all fours with the one who withholds from preference. In either case he is held to pay

the creditor a reasonable sum for the damages done him through such detention.

As stated under Claim I, there is projected here, as there, the fact that the claimant Government has received in full the principal sum.

The law as laid down in England and the United States in the courts of both countries is well settled in cases of this character. Where interest is not a matter of contract it is not regarded as an integral part of the debt but as a mere incident thereof. In consequence, if the original debt is paid the incident thereof ceases. There is no authority of repute known to the umpire which sustains a contrary contention. The maxim, "Equity follows the law" is also in the mind of the umpire. This maxim would be controlling if in international matters it should apply under a protocol containing such provisions as are found in the one by which this tribunal exists. If it is to control, then the claims under this memorial must be disallowed.

That when the principal thing ceases to exist, things merely incidental thereto, or incidents thereof, cease also, is a logical deduction and may well control in the courts and yet not be controlling between Governments before an international tribunal.

It seems to the umpire that the claimant Government acted with wisdom and with proper regard for the dignity and quality of the respondent Government when it received the payments made as payments on the principal in accordance with the wishes of the respondent Government; and, while presently pressing the claim for interest upon Venezuela, awaited the action of that country in response to the demand instead of applying the payments, as made, first to interest and the remainder, if any, to the principal, and would have been the due course between individuals. The umpire is aware that it has been held by the courts that to accept the principal and yet claim the interest as still due does not affect the rule first stated because the act of receiving is not compulsory but voluntary on the part of the payee.

To the mind of the umpire, however, these rules of the courts concerning litigants and litigation before them are not necessarily correct or safe guides for international tribunals, or for the conduct of nations in their intercourse with one another. The rule which suggests that nations do not ordinarily pay interest to a claimant is based upon the ground that it can not be assumed that a nation is not ready to pay as soon as the debt is determined and the responsibility fixed. Here it is evident that Venezuela was financially unable to make immediate response to acknowledged obligations. It appears to the umpire that the conduct of the claimant Government in continuing to press its demands for interest, but at the same time consenting to receive payment of the principal sum, is to be approved as properly regardful of the dignity of the debtor nation; and that in relying upon presenting her claim for interest as an independent claim she was, in effect, placing both Governments on a level, which was wise and discreet. The umpire, looking to the protocol for guidance, finds ample warrant for an award which produces justice and equity, clearly and indisputably, although it may be at variance with the strict provisions and holdings of the courts. This tribunal is to decide "all claims upon a basis of absolute equity without regard to objections of a technical nature * * * ." In the opinion of the umpire, which he rendered in the Aroa mines supplementary claims on page 67[a] of said opinion, he

[a] Page 386, this volume.

expresses his interpretation of absolute equity to be "equity unrestrained by any artificial rules in its application to the given case." On page 5[a] of this same opinion there are quoted his accepted definitions of "technical" as used in the protocol.

With this mandatory order from both Governments to do justice and equity regardless of objections of a technical nature, the duty of the umpire in this case is made plain. He must ascertain "that which is equally right or just to all concerned"—that which is "equal or impartial justice" (Century Dictionary; title, Equity.)—and make an award which is "fairness in the adjustment of conflicting interests—the application of the dictates of good conscience to the settlement of this controversy." (Ibid.)

There remains to consider the objection raised by the honorable Commissioner for Venezuela that the award must exclude from the benefit of interest allowance, if made, all Venezuelans who have replaced the old claimants as their sole heirs. The reason urged to sustain this position is that this Mixed Commission was "constituted to decide the claims of *British subjects* against Venezuela and that Venezuelans can not legally apply thereto for maintaining their rights." This is a point the force of which, when properly applied, has been acknowledged by the umpire and has met his approval in the claim of Mathison[b] and in the claim of the heirs of Stevenson,[c] but in the case now being considered all rights passed upon by the umpire were vested, respectively, in 1865 and in 1869, when the stated account was agreed to and when the awards were made. This vested right may pass, like other vested rights, to those who in themselves would have no place before this tribunal, but who as the representatives of those having such vested rights may have such place. To hold otherwise would permit Venezuela by delaying payment of these vested rights to avoid payment at all, which would not partake of justice or equity. In the Chopin case, quoted in the umpire's opinion in the heirs of Stevenson[d] and found in Moore, volume 3, 2506–2507, it was held that a claim duly presented before a commission became such a vested right that an award could be made for the benefit of unquestioned citizens of the respondent government to take as representatives of one deceased whose right had thus vested.

There are many other cases to be found in Moore where the claims were held within the terms of the convention if vested in a deceased claimant, although the immediate representative would not, on his own part, receive an award.

In the opinion of the umpire this case takes its true status back when the indebtedness was agreed upon between the Governments and the awards were made, and therefore these claims rest upon rights which have vested for more than thirty years.

Interest is but an incident of the original award and takes the right then established in the principal sum. This would have been the case had the interest been discharged from time to time, and it is not equity to give Venezuela any advantage to be derived from its own delay. Such appears to the umpire to be a just, equitable, wise, and salutary rule to apply in this case.

Interest is therefore allowed in this second branch of the memorial at 3 per cent, beginning with 1874 and ending with 1884, both inclu-

[a] Page 353. [b] Page 433. [c] Page 442. [d] Page 448.

sive, amounting in all to $39,797.32. The umpire therefore holds that judgment should be entered in both classes of claims in the round sum of £46,279, and award will be made accordingly.

MATHISON CASE.

(By the Umpire):

In cases of dual nationality the law of the domicile is the law which governs as to citizenship.

The constitution of 1864 of Venezuela can not be retroactive in its effect so as to constitute one born before that date in Venezuela a citizen of Venezuela; but such was not the effect of said constitution.

CONTENTION OF BRITISH AGENT.

In this case the claimant was born in Venezuela on September 14, 1858. His father was the child of British parents and was born in Trinidad. The claimant is therefore by the law of England a British subject. If he is also a Venezuelan it is admitted that he will have no standing before this Commission, since the wrong alleged was done to himself.

The Venezuelan law on the subject is as follows:

Constitution of Venezuela of 1830, article 10—

The following are Venezuelans by birth: Free men born in the territory of Venezuela.

Constitution of 1857—

The following are natural-born Venezuelans: All persons born in the territory of Venezuela.

The latter was the constitution in force at the time of the claimant's birth.

It is submitted that this does not and was not intended to apply to persons born in Venezuela of foreign parents, if such persons should be by the law of their parents' country nationals of that country.

If the local law of the country where a man happens to be born is to have the effect of preventing him from enjoying the privileges of his parents' nationality, it must expressly and in clear terms state that intention, otherwise it will be taken not to have intended to produce that effect and to have excluded the case of a man so circumstanced. General words can not be held sufficient to produce such a result.

Upon consideration of the context of the provision above quoted it becomes plain that the constitution gave Venezuelan nationality as a privilege and in no way intended to insist upon it as a compulsory burden.

Constitution of 1830, article 10, section 3:

Venezuelans by birth are those born in foreign countries of Venezuelan fathers while absent on the service of or on account of the Republic, or with the express license of competent authority.

The purport of the constitution of 1857 is the same.

In other words, Venezuelans going abroad, save under special circumstances, lose the privilege of having their children born Venezuelan. That is to say, the Venezuelan legislature regarded nationality in the light of a privilege and had no intention of making the nationals of

other countries Venezuelan against their will and did not intend to include the case in question.

It was not till 1864 that it occurred to the legislature to insist that the nationals of other countries should be Venezuelan whether they wished it or not. The contention of the Venezuelan minister, cited on page 3 of the opinion of the Venezuelan Commissioner, is untenable in view of the above section.

It is hardly necessary to explain that the attitude of Great Britain toward this matter has always been the same, viz, that where the law of a foreign country clearly states that the nationals of Great Britain born in that country are to be nationals of that country while there resident, Great Britain acknowledges the right of those countries to claim them on their own territory. Here, however, the law of the country does not and was not intended to have that effect.

That the earlier constitution was not intended or believed to have the effect alleged by the Venezuelan Commissioner is shown, in spite of subsequent explanations and protestations, by the terms of the later law. (Constitution of 1864.)

ART. 6. The following are Venezuelans: All persons who have been born or who may be born in the territory of Venezuela, *whatsoever may be the nationality of their parents.*

It will be seen that this provision was really meant by its framers to be a *change* in the law, as is evidenced by the attempt to make it retroactive in its effects, a pretention which Great Britain through its minister at once stated that it could not in any way countenance.

Having in view, then, that the words of the earlier constitution are on the face of them insufficient to produce the result contended for, that they were not intended to do so, and that this must be taken to have been the opinion of the framers of the constitution of 1864, there is no conflict of law as regards the nationality. The claimant was born a British subject; the law at the time in force in Venezuela did not have the effect of giving him any other nationality; no subsequent law, therefore, could have the effect of depriving him of the privileges of British nationality, and the British Government are entitled to maintain this claim on his behalf.

GRISANTI, *Commissioner* (claim referred to umpire):

Edward A. Mathison demands of the Government of Venezuela payment of £4,966 owing to damages and injuries which, according to his own statement, were caused him by the Government troops.

The undersigned rejects such a claim because said Mathison is of Venezuelan nationality, and therefore has no right to claim before this Mixed Commission. Mathison was in fact born in Ciudad Bolívar in the year 1858, his father being an Englishman, therefore long after Venezuela had assumed its position as an independent nation and declared and inscribed in its constitution the principle *jure soli* by virtue whereof every man born in Venezuelan territory is a Venezuelan by birth.

See the following pertinent extracts:

Constitution of 1830. Title III. On Venezuelans.

ART. 9. Venezuelans are such by birth and by naturalization.

ART. 10. Venezuelans by birth are: The freemen born in the territory of Venezuela.

Constitution of 1857. Title III. On Venezuelans.

ART. 7. The quality of a Venezuelan proceeds from nature or may be acquired by naturalization.

Venezuelans by nature are: All men born in the territory of Venezuela.

Constitution of 1858. Title II. On Venezuelans.

ART. 6. Venezuelans are: First by birth, all those born in the territory of Venezuela; the children of Venezuelan father or mother born in the territory of Colombia, and those of Venezuelan parents born in any foreign country.

Constitution of 1864. Title I. Section II. On Venezuelans.

ART. 6. Venezuelans are: All those born or that may be born in the territory of Venezuela whatever may be the nationality of the parents.

In the constitutions enacted by the Republic in the years 1874, 1881, 1891, 1893, and in the one actually in force, which is that of 1891, the last extract is textually reproduced.

Under the rule of the constitutions of 1857, 1858, it was claimed by some foreign governments that children who were born in the territory of Venezuela of foreign parents were to follow their parents' nationality, but the Republic always maintained that they were Venezuelans; and in order to avoid such discussions, no matter how unfounded the pretensions of the aforesaid governments might be, the provision contained in article 6, No. 1, of the constitution of 1864, was enacted.

No sooner was the fundamental law published than the chargé d'affaires of France addressed himself to the minister of foreign affairs in Venezuela, stating that his Government had ordered him to ask precise explanations about the meaning of certain provisions contained in the new constitution of the Republic with regard to nationality.

Article 6 [says the chargé d'affaires] reads thus: "They are Venezuelans: First, *all those born or that may be born in the territory of Venezuela, whatever their parents' nationality may be.*"

This paragraph being susceptible of two meanings, the undersigned wishes to know whether the legislature has intended to establish for every person born, or that may be born, of foreign parents in the territory of the Republic, the obligation of embracing, even against his will, Venezuelan nationality, or has only been willing to grant him the right of claiming this nationality in preference to that of his parents.

In this last case, the undersigned can but pay homage to the liberality of the new laws of the Republic, quite in conformity on this point with the provisions of French law.

On the other hand, he should be very sorry to be obliged to seriously protest against nationality being imposed by force on individuals born of French parents, if such be the meaning of the first paragraph, article 6, of the fundamental law of the United States of Venezuela.

Doubtless the provision referred to is not susceptible of two senses, having but one, that which has been expressed in the first place by the honorable French minister. As for the protest, it is absolutely unlawful, in view of the fact that Venezuela, on sanctioning said law, made use of its sovereignty, an essential tribute of every independent nation.

The minister of foreign affairs of Venezuela answered the chargé d'affaires, as follows:

In the former constitutions of Venezuela, it recognized as its citizens all men born in its territory, this declaration standing alone. The Executive power realized and always understood that such an article regarded as citizens, even against their will, all who were born in this country. There was only one case in which the Executive power yielded—that is to say, the one concerning the young man d'Empaire. His resolution, however, as coming from an authority who had no right to interpret the constitution, had only a transitory character, and so it was then submitted to Congress. The affair not being decided at the time of the inauguration of the present

Government, this Government consulted the cabinet council, and its opinion maintained the principle of imposed nationality. In conformity with this a pretension of the chargé d'affaires of Spain was then decided. It claimed the native citizenship on behalf of the sons of Spaniards, taking as a precedent the circumstance that the same had been bestowed on descendants of French and English people. Other cases of the same nature were likewise decided by this secretaryship. (Foreign Memorial, 1865.)

At the same time (1865) Mr. Edwards, chargé d'affaires of Great Britain, acknowledged the right of Venezuela to dictate the above provision in 1864, alleging only that in that case it was not to be extended to those born prior to it. The minister of foreign affairs of Venezuela hastened to show that said decision was not retroactive, but explanatory. In truth, the constitutions of 1830, 1857, and 1858 sanctioned the same principle as well as that of 1864, only in this last one the expression is clearer, if possible, so as to make any pretension impossible, however rash, against the Venezuelan nationality forcibly imposed upon persons born in Venezuela of foreign parents.

It is worth mentioning that in the epoch in which Mathison was born the principle *jure soli* was in force in England absolutely, somewhat modified afterwards by the law of 1870.

Jusqu'à une époque toute récente, l'Angleterre était un pays de perpetuelle allégeance. Quiconque était né sur le territoire britannique était sujet britannique, et ne pouvait cesser de l'être sans le consentement du prince. (Ernest Lehr, Eléments de Droit Civil Anglais, 1885, p. 21.)

La loi de 1870 (sec. 4) confirme implicitement le vieux principe du *common law* que tout individu né sur territoire britannique est par ce fait seul sujet britannique. (Idem., p. 23.)

And it is to be borne in mind also that England has decided on several occasions some controversies identical with the one arisen on account of Mr. Mathison's nationality in the way I contend to be right.

The diplomatic correspondence of the English Government furnishes us with numerous proofs in this respect.

Sec. 547. En 1842 le gouvernement de Buenos Aires ayant voulut obliger au service militaire plusieurs sujets anglais nés dans la République Argentine, ceux-ci réclamèrent la protection du gouvernement britannique. L'avocat général du royaume uni décida que "l'effet de la loi anglaise ne pouvait aller jusqu'à priver le gouvernement du pays où ces personnes étaient nées du droit de les considérer comme ses sujets naturels, et qu'elles ne pouvaient être protégées contre la loi qui atteignait les sujets du pays, à moins que cette loi ne refusât la qualité de nationaux aux fils d'étrangers." C'était donc au gouvernement argentin que les individus qui se croyaient lésées devait s'adresser.

En 1857 la même question se présenta de nouveau à Buenos Aires, où des sujets anglais nés dans cette ville furent astreints au service de la milice. En réponse à leur demande de protection, Lord Palmerston écrivit à l'Envoyé anglais que le gouvernement de S. M. ne pouvait réclamer de telles personnes comme sujets anglais. (Le Droit International. Calvo, Tome 2, p. 42.)

Paragraph 549. L'année suivante nous voyons encore le gouvernement anglais affirmer la même doctrine. Dans une dépêche de Lord Malmesbury à Lord Cowley nous lisons: "Il est permis à tout pays de conférer par des lois générales ou spéciales les privilèges de la nationalité aux personnes qui naissent hors de son territoire, mais il ne peut les leur accorder au détriment du pays où elles sont nées après qu'elles y sont retournées volontairement et y ont fixé leur domicile. En règle générale ceux qui naissent sur le territoire d'une nation sont tant qu'ils y résident soumis aux obligations inhérentes au fait de leur naissance. La Grande Bretagne ne saurait permettre que la nationalité des enfants nés sur son territoire de parents étrangers soit mise en question. (Calvo, Ibid., p. 48.)

In 1843 a question arose between Great Britain and Portugal identical with the one we are studying, and Lord Aberdeen sent the English representative the following instructions:

I have received your official letter, dated the 5th of May, by which you advise me that you have informed the minister of foreign affaires of Portugal that the Government of Her Majesty can not admit even for a moment the right vindicated by the Portuguese Government of considering as Portuguese subjects all persons born in Portugal, notwithstanding their descending from foreigners residing in said country.

I think it necessary for your best information to let you know the opinion of the advocate-general of the Queen on several cases arisen in foreign countries, in which the right you refer to in your official letter has been discussed.

Such opinion is, substantially: That if, according to the written law of this country, all children born out of the King's obedience, whose parents or paternal grandfathers were subjects by birth, are themselves entitled to enjoy British rights and privileges while remaining in British territory, the British statute, however, in its effect can not be extended so far as to deprive the Government of the country where those persons were born of the right of claiming them as subjects, at least as long as they remain in that country. (Seijas, Derecho Internacional Hispano-Americano, Tomo I, p. 340.)

Not by the strength of my reasoning, but by the authority of the texts above cited, I have fully proven that Mr. Edward A. Mathison is of Venezuelan nationality, and being such has no right to resort to this Mixed Commission, making a claim against his own native country. Therefore said claim ought to be disallowed.

PLUMLEY, *Umpire:*

The claimant was born in Venezuela on September 14, 1858. He now resides and has always resided in Venezuela. His father was of British parents and was born in Trinidad. No question is made that by the law of Great Britain one born in another country of a British father domiciled in such foreign country is a British subject. It is admitted that if he is also a Venezuelan by the laws of Venezuela, then the law of the domicile prevails and the claimant has no place before this Mixed Commission.

His claim is for £4,766 for damages and injuries received by him through troops of the Venezuelan Government. No question is made that his claim is a just one, providing he brings himself within the jurisdiction of the Commission.

The honorable Commissioners fail to agree, and therefore this case comes to the umpire to be determined by him.

The constitution of Venezuela of 1864, title 1, section 2, subject, Venezuelans, is as follows:

ART. 6. They are Venezuelans: First. All those born or that may be born in the territory of Venezuela, whatever may be the nationality of their parents.

No question is made that the constitution then established by the Republic is textually the same now, and has remained thus ever since 1864.

No question is made by the learned agent for the British Government that, under the constitution of 1864, one born thereafter in circumstances similar to those of the birth of the claimant Mathison would be a Venezuelan citizen, but it is asserted that the constitution existing at the time of the claimant Mathison's birth did not impose Venezuelan citizenship upon the claimant. The interpretation to be given to the constitution of 1857 is decisive of the question in issue, as it is agreed that this is the constitution in force at the time of the claimant Mathison's birth.

The learned British agent contends that the constitution of 1864 can not have retroactive effect so as to constitute one born before that date

a citizen of Venezuela by force thereof, and the umpire sustains his contention. The umpire does not understand the honorable Commissioner for Venezuela to claim retroactive force for the constitution of 1864, and understands him to accept the claim of the learned British agent in that regard.

The umpire understands that the honorable Commissioner for Venezuela claims in regard to the constitution of 1864 simply this, that it is exigetical, not additional, and that beginning with 1830 the constitution of Venezuela has had in this regard the same meaning and purport as the constitution of 1864.

It is insisted by the learned agent for Great Britain that to have the effect to deprive him of the nationality of his parents the law of a country where a man happens to be born must be stated in express and clear terms, and that general words can not be held sufficient to produce such result; and he claims further that the language of the constitution of Venezuela as it was prior to 1864 comes within the force and effect of his objection.

The strength and value of this contention will depend in a great measure upon what is deemed the natural relation of the state to those born within its domain, and conversely the natural relation to the state of one so born. If the state owes to such the protection due to its citizens, and in return has a right to demand from such due allegiance, if this is the natural relation between the two, changed only by artificial rules, legislative enactment, or kingly decrees, the language used in any law having reference to such relations will be interpreted to favor the natural status, unless it clearly appears to express a different purpose. On the other hand, if such is not the rule of nature, then an effort by enactment to make it a rule of the state will require very clear and unambiguous language to express such intention, and if ambiguities exist or the expression is weak the interpretation will be against the law which seeks to establish a principle in derogation of a great natural law.

Phillimore, volume 1, chapter 18 (star page), section 328, says:

> First. As to the right of territorial jurisdiction over persons: They are either (1) subjects or (2) foreigners commorant in the land. * * * Under the term subjects may be included both native and naturalized citizens. * * * The native citizens of a State are those born within its dominions, even including, according to the law of England, the children of alien friends.

In a note to Phillimore, Volume IV, page 17, it is said that in Shedden *v.* Patrick, 1 Macqueen's House of Lords' Cases 611, Lord Chancellor Cranworth observes that in England, *independently of statute law* and with certain exceptions, every one *born* abroad is an alien. England holds that the happening of birth within its dominions from parents who are not enemies affixes and imposes an indelible citizenship in that country. See the case of Frost MacDonald in State Trials, 887. Here the respondent left Great Britain in his infancy, but he was born there. He was taken in arms holding a French commission, the latter being the country of his domicile; he was held guilty of treason by the courts of Great Britain.

> Natural allegiance is such as is due from all men *born* within the King's dominions immediately upon their birth. (Blackstone (Cooley's), vol. 1, 369, citing 7 Rep. 7.)
>
> The children of aliens born here in England are, generally speaking, natural-born subjects and entitled to the privileges of such. (Blackstone (Cooley's), vol. 1, p. 373.)
>
> The first and most obvious division of the people is into alien and natural-born subjects. *Natural-born* subjects are such as are born within the dominions of the

crown of England * * * and aliens such as are born out of it. The thing itself, or substantial part of it, is founded in reason and the nature of *government*. (Idem, p. 366.)

Such was the rule of the common law. All changes are the result of statutory legislation.

Blackstone contended, volume 1 (Cooley's), page 369:

That the natural-born subject of one prince can not by any act of his own * * * put off or discharge his *natural* allegiance to the former.

And that this is the principle of *universal law*, citing to sustain this 1 Hale's P. C., 68.

The universality of this principle to the extent of holding the inability of expatriation is, of course, very much questioned, and is only quoted here to show the force which attaches to the incident of birth in establishing one's citizenship. In all these there are certain well-defined exceptions which, not being necessary to this discussion, are assumed to be in the minds of everyone, and therefore that no especial reference to them is necessary.

Story's Conflict of Law, second edition, Chapter III, section 48, gives as the general rule:

Persons who are *born* in a country are generally deemed to be citizens and subjects of that country.

That—

A reasonable qualification of the rule would seem to be that it should not apply to the children of parents who were *in itinere* in the country, or who were abiding there for temporary purposes, as for health, or curiosity, or for occasional business.

When I say that an alien is one who is born out of the King's dominion or allegiance, this always must be understood with some restrictions. The common law, indeed, stood absolutely so, with only very few exceptions. * * * And this maxim of the law proceeded upon a general principle that *every man owes natural allegiance where* he is *born*, and can not owe two such allegiances or serve two masters at once. (Blackstone (Cooley's), vol. 1, 373.)

The Century Dictionary says:

Natural-born citizen. One who is a member of a state or nation by virtue of birth.

Native. One born in a given country as a native of it. Of or pertaining to one by birth or the place or circumstances of one's birth.

Citizen. A native of a city or town. * * * A freeman of a city or town as distinguished from a foreigner or one not entitled to its franchise.

"Surely no native-born woman loves her country better than I love America."

Naturalize. To confer the rights and privileges of a native-born subject or citizen upon.

In ancient Rome citizenship, though most usually acquired by birth, might be obtained by special grant of the state. (International Encyclopædia; title, Citizen.)

Then the chief captain came and said unto him, Tell me, art thou a Roman? He said, Yea. And the chief captain answered, With a great sum obtained I this freedom; and Paul said, But I was *free born*. (Acts xxii, 27–28.)

But Paul said, I am a man which am a Jew of Tarsus, a city in Cilicia, a citizen of no mean city. (Acts xxi, 29.)

"Breathes there the man with soul so dead
Who never to himself hath said,
This is my own, my native land—
Whose heart hath ne'er within him burned
As home his footsteps he hath turned
From wandering on a foreign strand?"
(Scott's Lay of the Last Minstrel.)

Allegiance on the one hand and protection on the other ordinarily settle this without difficulty when applied to native-born or naturalized citizens, or mere commorant aliens. Serious questions arise only when the law must be applied to those who are domiciled from choice in a

state of which they are not native and in which they have not sought or have not been permitted citizenship.

The necessities and blessings of commerce and the comity now existing between nations have enlarged these conditions and have permitted privileges to each quite beyond those pertaining to such relations in a not remote period. When the proportionate amount of these unattached persons to the great body of native citizens is relatively very small, the danger and the harm to the state is little, if any; but any considerable number, relatively, of persons who partake of the benefits of a country and yet deny to it allegiance and defense, while claiming from it peculiar protection, become a serious menace and harm to the state of which they are a part. It is not egotism for a country to assume that a man who becomes de facto a citizen by his established domicile, who there erects his rooftree, there selects and locates his wife, and there rears his children, has deliberately chosen that such country shall be for his children their native land, to whom they, if not he, shall owe allegiance. If citizenship is thereby imposed, it is not by the state, but by the parent.

This law of nature, of nativity, furnishes the most ready basis of citizenship, and a law which recognizes it and which denies continuous alienship to successive generations is as general as it is wise and as wise as it is general.

It follows, then, that in the judgment of the umpire a law defining citizenship to mean those who are born in its dominions is so far in accord with the universal trend of law upon snch matters, so consistent with a due regard for the higher welfare of the inhabitants of the state, so sympathetic with natural law, that he would find nothing doubtful nor uncertain if it be expressed in general terms. Most certainly he finds no doubt or ambiguity in the expressions:

ART. 9. Venezuelans are such by birth and by naturalization.

ART. 10. Venezuelans by birth are: The free men born in the territory of Venezuela. (Venezuelan constitution, 1830.)

This is not generalization. Using the article "the" before "freemen" makes it specific and certain. It includes all that are born free. It excludes all others and none other. It gives one test only. It defines that one. There is no ambiguity here—nothing which suggests or permits interpretation. It comes within the rule quoted from Vattel in Phillimore (Vol. II, sec. 70):

If the meaning be evident and the conclusion not obscure, you have no right to look beyond or beneath it to alter or to add to it by conjecture.

Nor does the umpire find ambiguity in this:

ART. 7. The quality of a Venezuelan proceeds from nature or may be acquired by naturalization.

Venezuelans by nature are: All men born in the territory of Venezuela. (Venezuelan constitution, 1857.)

Here, also, there is no generalization. The most conclusive and comprehensive word known to the English language does duty here. The Century Dictionary:

All. The whole quantity of, with reference to substance, extent, duration, amount, or degree, with a noun in the singular, as all Europe, all history, etc.

"All hell shall stir for this." (Shakespeare, Henry V, V, 1.)

"All heaven resounded, and had earth been then, all earth had to her center shook." (Milton, Paradise Lost.)

The Century Dictionary further says:

The *whole number of with reference to individuals* or particulars taken collectively with a noun in the plural; as, all men, all natives, etc.

Nor is this less certain or significant:

ART. 6. Venezuelans are: First, by birth, all those born in the territory of Venezuela; the children of Venezuelan father or mother born in the territory of Colombia, and those of Venezuelan parents born in any foreign country. (Venezuelan constitution, 1830.)

These are identical in scope and largely in language with the fourteenth amendment of the Constitution of the United States, viz:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

It is well understood and clearly expressed by the learned agent for Great Britain that the expressions used in the different constitutions in Venezuela hereinbefore quoted are to be accepted as they have been interpreted by that country through the proper channels. Being wholly a matter of its own domestic concern it is not questioned that the interpretation which it has placed upon this language is authoritative and must be accepted by all other nations. Upon such matters if the laws of other nations conflict with the laws of Venezuela the laws of such other nation must yield, as they have no extraterritorial effect beyond the amount which the comity of Venezuela may allow. It is the belief of the learned British agent that the provisions concerning citizenship, hereinbefore quoted, from the constitution of Venezuela, and the provisions of the constitution of 1864, hereinafter written, are progressive, not interpretative. It is asserted by the honorable Commissioner for Venezuela that these several provisions are not progressive, that the several constitutions are identical in meaning and purpose, but that the language used is of the nature exegetical to meet the resisting contentions of other nations concerning the meaning of the constitution then existing—to meet those objections and protestations with language which would effectually preclude any such interpretation and stay all such contentions.

As an aid in understanding the spirit, scope, and purpose of the constitution of Venezuela of 1830, 1857, 1858, and 1864, the opinion of its statesmen is also of value. In the case before the American-Venezuelan Claims Commission under the convention of 1866 Commissioner Andrade, whose opinions give evidence of superior mental strength and ability, says (Moore's Int. Arb., vol. 3, 2457):

By virtue of that right Venezuela declared in her constitutions of 1830, 1857, 1858, and 1864 a Venezuelan citizen by birth every free person born in the territory of Venezuela, such, for instance, as Narcissa de Hammer and Amelia de Brissot,

referring here to the widows who appeared as claimants before the Commissioners in virtue of their derived citizenship through their husbands, who were United States citizens in their lifetime, while the claimants were Venezuelan born, reared, and domiciled.

The honorable Commissioner for Venezuela further asserts that his present contention is in accord with all past interpretation of this point by Venezuela. This last proposition is nowhere and in nowise challenged by the learned British agent, and hence is accepted by the umpire as an admitted fact. Such being the interpretation by Venezuela of its own constitution in this regard it must prevail.

The law enacted by the supreme power of the state is to be interpreted according to the intention of that one power. (Phillimore, International Law, Vol. II, sec. 66.)

Such intention is to be gained by what the country or state enacting the law has said was the meaning if it has made a deliverance through the proper channels upon that subject. If not, then there comes to our aid another principal rule of interpretation.

Inculcates as a cardinal basis (which) is to follow the plain and obvious meaning of the language employed. (Phillimore, International Law, Vol. II, sec. 70.)

To hold in conformity with the contention of the honorable Commissioner for Venezuela that one born in the country of alien friends is a citizen of the country of his birth is to hold in accord with the position of England and the position of the United States of America and is in accord with the wise policy for a state which is growing or anticipates growth by immigration. It can not wisely have a large, foreign, cancerous growth of unaffiliated and unattached population alien to the country, its institutions, and its flag, but in due regard to its own safety it must fix a time when the domicile of the parent's choice shall create a citizen out of the son of his loins born within that domicile. It is the test of nature; it is the test of Venezuela. If citizenship is thereby imposed it is through the father's voluntary, intelligent selection. There must be an end to the citizenship of the national of a country when he is resident and domiciled in some other country. If the father can retain his foreign nationality and impart that to his own son on the soil of the country of his domicile, then may not the son of the son, and so on ad infinitum?

The umpire holds that the constitution of 1864 is but explanatory of the meaning of the constitutions preceding upon these questions of nationality, and, that since 1830, a free man born in Venezuela is a citizen of Venezuela; and that therefore Edward A. Mathison is a Venezuelan and not a British subject, and this tribunal has no jurisdiction over his claim.

It is therefore dismissed without any prejudice to any right which the claimant may have in any other tribunal for the recovery of his claim.

STEVENSON CASE.

(By the Umpire):

A woman acquires the nationality of her husband by marriage, but if she continues to reside in the country of her birth after the death of her husband, and the law of such country provides that she is a citizen of the country of her husband during her marriage only, then the law of her domicile will control and she can not be considered as a subject or citizen of the country of her husband.

Where there appears to be a conflict of laws with respect to the nationality of a person, she is deemed to be a citizen of the country in which she has her domicile.

Under the protocol the Commission has no jurisdiction to decide claims of the British nation, as such, against Venezuela. Its jurisdiction is limited to hearing and deciding claims on behalf of British subjects.[a]

Two children resulting from the marriage, who were born on British soil, are, under the laws of England, British subjects, and have a right to claim before the Commission.

The fact that they were in the military service of Venezuela can in no way affect their status as British subjects, and can not amount to a declaration to become citizens of Venezuela, and in no case can it be equivalent to formal naturalization as citizens thereof.

---

[a] See Miliani Case, p. 754.

The decease of one of these children after the presentation of the claim and before the award will not defeat the allowance of his claim, as it was British in origin and at the time of its presentation to the Commission. The claim with respect to these two heirs allowed; with respect to the widow and other children, dismissed without prejudice.

CONTENTION OF BRITISH AGENT.

This claim is presented by the British Government on behalf of the estate of the late J. P. K. Stevenson.

The circumstances of the claim are already before the Commission. Since the claim was presented by the British Government in 1869 the claimant, a British subject born in Scotland, has died, and the claim is now presented on behalf of his estate.

The principle upon which the British Government ask compensation is that underlying the diplomatic presentation of all claims of foreign subjects by their governments. Compensation in such cases is demanded and granted in respect of an international wrong, committed to the property of the subject of the demanding state by the state on which the demand is made. The injury done to the subject is an injury done to the state and remains unatoned until the claim is satisfied. It is on this theory that the diplomatic support of claims is recognized in international law, and it is the principle upon which the British Government has always acted in such matters. (Cf. Vattel, book 2, ch. 6, quoted in Moore Int. Arb., at p. 2378. The decision in the case of Cassidy (id., p. 2378) exemplifies this principle.)

The claim, then, being a claim on behalf of a British subject in its inception, has not been satisfied. The injury done to the State therefore remains and is not affected by the death of the person injured and the vesting of the estate in another.

As regards the amount recovered this will devolve precisely as the damaged portion of the estate would have done, had it not suffered damage at the hands of the respondent Government.

Such claims as the present come under the terms of the protocol of February 13, 1903. Preamble:

Whereas certain differences have arisen between Great Britain and the United States of Venezuela in connection with the claims of British subjects. * * *

One of the "differences" mentioned was the injury inflicted on the British Government in connection with this claim, which has been in dispute since 1869. The object with which this tribunal is constituted is, by the terms of the protocol, to settle such differences, and therefore in this case to cause the Venezuelan Government to make atonement to the claimant Government for the wrong inflicted upon it in the person of its subject Stevenson.

As the claim also satisfies the conditions of Articles I and III of the protocol, this Commission has jurisdiction to make an award in favor of the claimant Government.

In the view of the British Government the nationality of Mrs. Stevenson and of her children is irrelevant; as, however, the conclusions drawn by the Venezuelan Commissioner appear to be inaccurate, his opinion ought not to remain unanswered.

The facts, which are not in dispute, are as follows:

Stevenson was an Englishman, but Mrs. Stevenson was, before marriage, a Venezuelan. The names, ages, and places of birth of the

children may also be taken to be as stated by the Venezuelan Commissioner.

It will not be seriously disputed that Mrs. Stevenson became, by the law of both countries, a British subject by her marriage and that there was at that time no provision in the law of either country to modify or qualify the completeness of that status.

When a person has completely acquired a particular nationality (British) no subsequent legislation of a foreign country (Venezuela) can devest him of that nationality or of any of its privileges unless he goes through the prescribed form of naturalization in that country. By the law of both countries Mrs. Stevenson became, in 1855, a British subject for the rest of her life (unless remarried, which is not the case here).

The Venezuelan law of 1873, though possibly effective in giving a double nationality to any widow whose marriage with a British subject should have taken place after that date, could have no effect as regards those already married.

As regards the children, the first six are British subjects according to the argument in the case of Mathison, to which the tribunal is respectfully referred.[a]

The two last, Juan and Guillermo, are British subjects by the laws of both countries. It is not disputed that the remainder are Venezuelans on Venezuelan territory.

The fact that a person takes a civil or military appointment under a foreign government does not affect his nationality, and it has never been held to do so.

GRISANTI, *Commissioner:*

The claim of J. P. K. Stevenson was submitted to the Venezuelan-British Mixed Commission which sat at Caracas in 1869. The Commissioner on the part of Venezuela refused to consider it, believing it was not within the jurisdiction of the Commission to do so, and the British Commissioner undoubtedly acknowledged this objection as right, for he withdrew the claim, with the reservation that such withdrawal was without prejudice to the rights of the claimant.

Said claim is presented anew before this tribunal, and the undersigned proceeds to give his opinion in regard thereto.

J. P. K. Stevenson married in Port of Spain, in 1855, Mrs. Julia Arostegui, she having been born in Venezuela in 1838 of parents who also were natives of the Republic. Stevenson had twelve children from his marriage, as follows: María, Hilaria, Agustina, Julia, Elena, Juan, Norman, Cecilia, Alejandrina, Corina, another Juan, and Guillermo. They were all born in Venezuelan territory (Maturín), except the last two, who were born in Trinidad, but have held public posts in Venezuela—Juan civil posts and Guillermo military ones. J. P. K. Stevenson died in Maturín about the middle of April, 1882.

The British Government now presents the claim on behalf of the heirs of Stevenson, who are his widow and surviving children. The Venezuelan Commissioner hereby rejects said claim on the ground that the said heirs, being Venezuelans, have no right to claim before this Commission, which is called upon to examine and decide claims of British subjects.

---

[a] See p. 429.

Mrs. Julia Arostegui, as before stated, was born of Venezuelan parents in Venezuela, and is therefore a Venezuelan. If by the English laws the lady acquired British nationality, she regained her Venezuelan nationality by virtue of her widowship, in conformity with article 19 of the Venezuelan Civil Code of 1881, in force when Stevenson died. Said article reads as follows:

> The Venezuelan woman who marries a foreigner shall be considered as a foreigner with respect to the rights peculiar to Venezuelans, provided that by so marrying she acquires her husband's nationality whilst she remains married.

This provision is the same as that of the Civil Code of 1873 and that of 1896, at present in force.

If by the British law the woman who marries an Englishman acquires British nationality and retains it so long as she acquires no other, and it be considered that a conflict has arisen as to Mrs. Stevenson, between said law and the above-mentioned provision of the Venezuelan Civil Code, the conflict should in justice be resolved, giving the Venezuelan law the preference. And, indeed, the ties which bind Mrs. Arostegui de Stevenson to Venezuela are many and close; it was here she and her parents were born, as also ten of her children; it is here her husband is buried; her affections all are centered in Venezuela, and likely enough she knows no other land which is not Venezuelan territory, excepting Port of Spain. Her marriage was solemnized at Trinidad because, the bridegroom being a Protestant, the priest of Maturín declined to marry them.

I shall now consider the nationality of her children. With regard to María, born in 1856; Hilaria, in 1858; Agustina, in 1860; Julia and Elena, in 1863; and Juan, in 1864; I hold that they are Venezuelans, and refer to the arguments contained in my opinion in reference to the claim of Mr. Edward A. Mathison.[a]

I consider that no discussion whatever is possible as to the Venezuelan nationality of Norman, born in 1865, Alejandrina, in 1869, and Corina, in 1871. Juan and Guillermo, born in Trinidad in 1873 and 1881, have mixed in the political affairs of Venezuela, and have held public offices; the former a civil and the latter a military position; both having been, therefore, deprived of the right to claim British protection.

In the verbal discussions with His Britannic Majesty's honorable Commissioner he has held that, as the British Government presented this claim in the year 1869 and it was withdrawn, they have now the right to present it anew, whatever be the nationality of its present owners. I have rejected such argument as being antijuridical, as the British Government is acting on behalf of the claimants, and they, being Venezuelans, such representation is unacceptable.

On the strength of the reasons assigned the Venezuelan Commissioner rejects entirely this claim.

I herewith produce three telegrams[b] referring to this case, addressed to the assistant Venezuelan agent, Dr. J. I. Arnal, two of which are from Gen. José Victorio Guevara, president of the State of Maturín, and the other one from Gen. L. Varela, jefe civil y militar of the State of Guayana. I am expecting other proofs, which I shall present as soon as received.

---

[a] Page 430.

[b] These telegrams refer to the place and time of birth of the claimants.

PLUMLEY, *Umpire:*

This case first came to the umpire on the disagreement of the honorable Commissioners concerning the objection of the honorable Commissioner for Venezuela that the claim was barred by limitation, which objection was overruled by the umpire, as set forth in his opinion in the same case of date October 16, 1903,[a] and the cause was returned to the honorable Commissioners to be considered on its merits.

The honorable Commissioners in their consideration of the merits of the case find no important disagreements as to the facts, but they do differ widely in their application of the law to the facts.

The admitted facts are that in 1859 J. P. K. Stevenson, since deceased, suffered recoverable injuries at the hands of the Venezuelan Government—

	Pesos.
On the Rio de Oro estate to the amount of	13,277.60
On the La Corona Mapirito and San Jáime estate	77,645.00
	90,922.60
In 1863 on the Bucaral estate	43,660.80
In 1869 on the San Jacinto estate	1,260.00
Total	135,843.40

J. P. K. Stevenson was at this time, had always been, and on the date of his death was a British subject domiciled in Venezuela. He died in Venezuela in 1882.

In 1855 the said J. P. K. Stevenson, then domiciled in Venezuela, married, at Port of Spain, Trinidad, Julia Arostegui, a Venezuelan by birth and domicile, who still survives him and is one of the parties in interest in this claim. This marriage was solemnized in Trinidad because the priest at their home in Venezuela declined to officiate, the groom being a Protestant. Of this marriage there were born to them, who still survive and are parties of interest in this claim, María, born in 1856; Hilaria, in 1858; Agustina, in 1860; Julia and Elena, in 1863; Juan, in 1864; Norman, in 1865; Cecilia, in 1867; Alejandrina, in 1869; Corina, in 1871; Juan, in 1873; and Guillermo, in 1881. Save the last two, all were born in Venezuela and have always had their domicile in Venezuela. The last two were born in Trinidad, but since 1881 they also have been domiciled in Venezuela and are said to have held offices, civil and military, in that country under the National Government. The domicile of the widow before and during her marriage and since has been in Venezuela.

Interest on this claim is asked as also expenses.

Upon these facts the honorable Commissioners disagree in judgment and the case has therefore come to the umpire for decision.

The umpire would first acknowledge to the learned agent for Great Britain and the honorable Commissioner therefor and to the honorable Commissioner for Venezuela his indebtedness for the very thorough, careful, and able manner in which the claims and counterclaims of the respective Governments have been laid before him. This presentation has in a great measure simplified the work of the umpire, and he is correspondingly grateful.

The claimant Government contends that it is not important to inquire into the citizenship of the widow and children of the deceased for the reason that it being acknowledged that the said J. P. K. Stevenson

[a] Page 327.

was a British subject and that this claim matured during his lifetime settle the question of jurisdiction in this tribunal. It is urged by the claimant Government that the injury having occurred to a British subject and an indignity having been committed through him against the British Government by the respondent Government it can not be atoned until full recompense has been made and that the true status of the case is found not in the citizenship of the representatives of the deceased at the time of the protocol, but in the unremoved indignity to the British Government. This position of the claimant Government is not assented to by the respondent Government, which insists that the jurisdiction of this tribunal turns upon the question whether the beneficiaries, the widow and heirs of Stevenson, are or are not in any part British, and they deny such nationality as to all and insist that the widow and children are all Venezuelans.

Venezuela was the domicile of J. P. K. Stevenson through long years of choice and settled purpose. It was the domicile of himself and his family at the time of his death. It was the domicile of origin in the case of Mrs. Stevenson. It was the domicile of origin in the case of all the children save two. This domicile of origin on the part of the children continued their domicile of choice, as well, after they became adults. As to the two born out of the country, it became with them a domicile of choice after they reached their majority. The domicile of the widow continued as it had always been—Venezuela. In Venezuela is found the home of her parents, her own birthplace, the old family rooftree, the graves of her family, and of her kindred and all of the tender associations which cluster around the home of one's youth. Here she found her husband; here her children were born; here she erected her own family altar; here remained the friends of her childhood, and here were all her children when her husband died; here were all the familiar scenes which had become woven into the warp and woof of her life, and were therefore a part of her life, and it is not strange that here she remained. There is not the slightest evidence that she ever had a thought of allegiance to Great Britain or ever suggested to her sons in their strength that their hearts should be fixed in loyalty to the British sovereign and their hands ready for his defense. Her relation as subject of Great Britain was wholly by affinity, so far as appears, and when the connecting link between her and Great Britain was broken in the death of her husband her citizenship came back to her domicile not only by the law of Venezuela but as her natural selection. There is nothing to suggest that Mr. Stevenson ever yielded personal service, had any personal loyalty, or did aught that was due in the way of allegiance to his native country. Apparently, in every respect but that of de jure, he had become a Venezuelan. To hold that under these circumstances the children were born British subjects and the wife constituted a British subject after the death of her husband against the law of Venezuela, organic and statutory, seems forced and unnatural. It seems to the umpire that the conditions of domicile of such great length and constancy as in this case have an important bearing on the ultimate rightful solution of this question. According to Boullenois, quoted in Story's Conflict of Laws, page 1697, it is safe to stand upon the proposition—

First. To follow the general principles which declare that the person will be affected by the state and condition which his domicile gives him. Secondly. Not to derogate from those principles, except where the spirit of justice requires it.

If the position assumed by the learned British agent is correct, that the act of 1873 was the beginning of a claim by Venezuela that her daughters when married to a foreign subject thereby partook of the husband's nationality only during the lifetime of the husband, it could hardly be taken as retroactive or null. The law existing at the time when her widowhood begins and her rights as widow vest will be effective, unless, indeed, as urged by the learned British agent, the country of the husband would not permit that her citizenship being once fully established, and exclusively, in that country, that the law of the land of her nationality could vest her of such vested citizenship. The force of this contention, if she were then domiciled or resident in the land of her husband's nationality, or in any land other than that of her nationality, it is not necessary to discuss. When applied as in this case, in the judgment of the umpire its force is largely weakened if not entirely spent. Her very marital relation in Venezuela, the legitimacy of her children, her rights of property in the estate of her husband, are all determined by the laws of Venezuela, which, while recognizing the privilege of one of her daughters to become the wife of a foreign subject, consents or refuses to consent, at her pleasure, to the passing of the citizenship of such wife into the nationality of the husband; and when Venezuela consents thereto qualifiedly she has the sole and exclusive right to settle her own interior policy in that matter, and to decree the extent of such qualification. This position gains peculiar force in this case, where, for eight years after the law of 1873, the husband, with his wife and family, continued their domicile in Venezuela through his continuing choice and election.

In the cases of Lucien Lavigne and Felix Bister before the Spanish Commission of 1871 in its sitting of 1878, the act of the Congress of the United States of February 19, 1855, was under consideration.

This act provides that—

> Persons heretofore born or hereafter to be born out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered and are hereby declared to be citizens of the United States. (10 Stats. at L., p. 604.)

Held in those cases that this law could not operate so as to interfere with the allegiance which such children may owe to the country of *their birth when they continue in its territory.* (Moore, Int. Arb., vol. 3, p. 2454.)

Under substantially identical conditions with the case now under consideration the question before this tribunal was passed upon by the Commission sitting in virtue of the convention between the United States and Venezuela of December 5, 1885. The questions were very ably discussed, and it was unanimously held that the Commission had no jurisdiction of the claim. The claimants were women born in Venezuela, widows of United States citizens who had resided in Venezuela during their married life, had had children born to them in Venezuela, and had continued to reside with their children in that country after the death of their respective husbands. By the laws of the United States, in virtue of their marriage they and their children also were citizens of the United States, their fathers having been citizens of the United States. (Moore, Int. Arb., vol. 3, p. 2456–2461.)

In Shanks *v.* Dupont (3 Peters, 243), the United States Supreme Court held that when the marriage is within the jurisdiction of the sovereign and the residence there, the sovereign is interested in the subject of allegiance, and it can not be dissolved without his consent so long as the wife remains within the jurisdiction.

Had Mr. Stevenson taken his wife within the dominions of Great Britain to reside, and had he there remained and died, leaving her domiciled there, and were she asserting a claim before this tribunal as one still domiciled in Great Britain or its dependencies, in the opinion of the umpire the law of Great Britain might well be taken as the controlling law and she be held to be a citizen of Great Britain as against Venezuela, notwithstanding the law of Venezuela reestablishing her citizenship in that country after the death of her husband. In the opinion of the umpire, where, as in this case, there appears to be a conflict of laws constituting Mrs. Stevenson a British subject under British law and a Venezuelan under Venezuelan law the prevailing rule of public law, to which appeal must then be taken, is that she is deemed to be a citizen of the country in which she has her domicile; that is, Venezuela.

Bluntschli, International Law, section 374, says:

> Certain persons may, in rare instances, be under the jurisdiction of two or even a larger number of different states. In case of conflict the preference will be given to the state in which the individual or family in question have their domicile; their rights in the state where they had no residence will be considered suspended.

Twiss, Law of Nations, page 231–232, says:

> According to the law of nations, when the national character of an individual has to be ascertained, the first question is, in what territory does he reside? * * * If he resides in a given territory permanently he is regarded as adhering to the nation to which the territory belongs and to be a member of the political body settled there.

In the case of Elise Lebret, before the French and American Commission, Judge Aldis says:

> In case of conflict of laws, as neither country can claim superiority over the other, the only reasonable way of settling the difficulty is to hold him subject to the laws of the country where he resides. The British act of 1870 and the Italian Code of 1866 recognize residence as the turning point in such cases. In Alexander *v.* The United States, No. 45, before the British and American Claims Commissioner (Hale's Report, pp. 15, 16), where the claimant was by British law a British subject and by American law an American citizen, it was held that his claim as a British subject could not be allowed, for that would be giving the laws of one country (Great Britain) superiority over the laws of the other (the United States). See the opinion of Judge Frazier, in which Count Corti concurred. (Moore's Int. Arb., vol. 3, p. 2505.)

That the national character of a married woman is always that of her husband is modified by the holding that such is the case when the domicile of the wife had continued to be that of the husband's nationality. (Moore's Int. Arb., vol. 3, p. 2505.)

The duty to regard as of superior force, in a case like the present, the law of domicile of the claimant is in accord with the expression of Lord Aberdeen in his communication to the British minister to Portugal, in 1845, in which he said:[a]

> I think it necessary, for your best information, to let you know the opinion of the advocate-general of the Queen on several cases arisen in foreign countries in which the right you refer to in your official letter has been discussed. Such opinion is substantially that, if according to the written law of this country, all children born out of the King's obedience whose parents or paternal grandfathers were subjects by birth, are themselves entitled to enjoy British rights and privileges while remaining

[a] Seijas, Derecho Internacional Hispano-Americano, Tomo I, p. 340.

in British territory, the British statute, however, in its effect, can not be extended so far as to deprive the government of the country where those persons were born of the right of claiming them as subjects, at least, as long *as they remain in that country.*

See quotation from Commissioner Grisanti's opinion in Mathison case.[a]

The learned agent for Great Britain contends that in this case—

> The principle upon which the British Government asks compensation is that underlying the diplomatic presentation of all claims of foreign subjects by their government. Compensation in such cases is demanded and granted in respect of an international wrong committed to the property of the subject of the demanding state by the state on which the demand is made. The injury done to the subject is an injury done to the state and remains unatoned until the claim is satisfied. It is on this theory that the diplomatic support of claims is recognized in international law. And it is the principle upon which the British Government has always acted in such matters. (Cf. Vattel, book 2, chap. 6, quoted in Moore's Int. Arb. at p. 2378.) The decision in the case of Cassidy (id., p. 2380) exemplifies this principle.
>
> The claim, then, being a claim on behalf of a British subject in its inception has not been satisfied. The injury done to the state thereby remains and is not affected by the death of the person injured and the vesting of the estate in another.[b]

This places the claim for an allowance before the Commissioners not on the status of the claimants before this Commission as determined by the protocol of February 13, 1903, but rather on the unatoned indignity to the claimant Government through the injuries wrought upon Mr. Stevenson by the respondent Government in his lifetime.

Had Mr. Stevenson been unmarried and without heirs ascending, descending, or collateral, the indignity would still be unatoned; but could there be a claim of a British subject before this tribunal under the protocol and there be no British subject living to be a beneficiary? Subsequent to the happening of those indignities to the British Government through J. P. K. Stevenson, if he had joined the revolutionists and fought the Republic of Venezuela the indignity to the British Government would have remained unatoned, but could the claim survive before this Commission?

Similarly, if, subsequent to the events complained of, Mr. Stevenson had renounced his British allegiance and had become a naturalized citizen of Venezuela; or if, subsequently to said events, he had removed from Venezuela to the United States of America, for instance, and there sought and obtained citizenship by naturalization, what would have been the status of this claim before this Commission? Had this claim been assigned by Mr. Stevenson in his lifetime, or by the widow and heirs subsequent to his death, to a Venezuelan citizen at any time prior to February 13, 1903, would it have had standing before this Commission? In these hypothetical cases the right to reclamation turns upon the act of forfeiture by the claimant or his representatives which deny the right of the parent country to intervene. May it not as well turn upon the death of all those for whom Great Britain has a right of intervention? Is it not essential to jurisdiction in this Commission that the right to intervention shall exist at the time of the happening of the events complained of and at the date of the protocol creating this Commission?

The umpire cites the claim of M. J. de Lizardi against Mexico before the United States and Mexican Commission under convention of July 4, 1868. Lizardi was dead. The claim was presented by his niece, Doña María de Lizardi del Valle, wife of Don Pedro del Valle. It

---

[a] Page 433. [b] Page 439.

was not shown to what nation her husband belonged, but he was not a citizen of the United States. She was the legatee of the deceased. There was before the Commission the question of jurisdiction arising through her acquired nationality by marriage. Sir Edward Thornton, the umpire, in giving his opinion, said in part:

As therefore, Mr. Lizardi's niece is not a citizen of the United States, and as she would be the beneficiary of what award the Commissioners might make, the umpire is decidedly of the opinion that the case is not within the jurisdiction of the Commission. Even if the uncle, Mr. Lizardi, had been a citizen of the United States, which the umpire does not admit, whatever may have been the merits of the case the jurisdiction of the Commission would have ceased on the death of Mr. Lizardi. (Moore's Int. Arb., vol. 3, 2483.)

In Calderwood, Executrix, against The United States (Moore's Int. Arb., vol. 3, 2485–2486), before the American and British claims commission, treaty of May 6, 1871, there was the case of a claimant who was the widow of a British subject resident in Louisiana who had, in his lifetime, a rightful claim against the United States. The claimant, but for the acquired allegiance, through marriage, to the British Crown, was a citizen of the United States. Counsel for the United States demurred to the claim for want of jurisdiction in the commission, denying to the claimant British citizenship after the death of her husband. To this demurrer the counsel for Great Britain made reply that the United States had no law providing for readmission to American nationality of one who had become alien through her marriage. The case evidently turned upon this point. Certainly it turned upon the question of citizenship of the claimant, and a majority of the commission held her still a British subject, overruled the demurrer of the United States, and sustained jurisdiction in the commission. The point which the umpire would make from this case is that, by unanimous consensus of opinion on the part of this eminent board, consideration of the claim was to be had or refused solely upon the question of citizenship of the claimant; not at all upon the indignity suffered by the Government of Great Britain and which continued unatoned.

In the case of Elise Lebret, previously referred to in this opinion, counsel for the United States claimed the following to be the true rule of construction in such case:

5. * * * When the treaty pledges compensation by France to citizens of the United States, it refers to those persons only whose citizenship in the United States is not qualified or compromised by allegiance to France; and that when the treaty pledges compensation by the United States to citizens of France reference is made to those persons only who are not only citizens of France, but who are also not included among the citizens of the United States. It can not be assumed of either Government that it is intended to compensate persons whom it claims as its own citizens, and that through the agency of another government. (Moore, vol. 3, 2491.)

In the commission between the United States and France under convention of January 15, 1890, there was presented the claim of Oscar Chopin *v.* The United States. It was presented on behalf of himself and three other heirs of Jean Baptiste Chopin, who was a French citizen, a resident of Louisiana, and died in 1870, leaving as a part of his estate this rightful claim. The four heirs, including Oscar, were born in the United States, but they had resided in France more or less, and there were such facts as justified the commission in giving an unanimous award for a certain sum, which they did not undertake to distribute, notwithstanding that Oscar Chopin himself, deceased before the making of the award, leaving a widow and five children, all born

in the United States. In Boutwell's report, page 83, the result is stated, and with this comment by this eminent gentleman and lawyer:[a]

It may, however, be assumed fairly that the commission were of opinion that the children of Jean Baptiste Chopin, although born in this country, were citizens of France, and that inasmuch as the death of Oscar Chopin occurred after the ratification of the treaty and after the presentation of the memorial, his right to reclamation had become so vested that it descended to his children independently of the question of their citizenship in France.

Another point to be observed is that the counsel for France withdrew so much of the claim as represented the interest of one of the four heirs of Jean Baptiste Chopin, she having married a citizen of the United States, thus clearly recognizing on his part the principle that the right of recovery was governed by the lawful interest of the beneficiaries and not in the original indignity to France, which still remains wholly unatoned. (Moore, vol. 3, 2507.)

Concerning the agreement between the United States and Spain of February 12, 1871, for the settlement of the claims of citizens of the United States or of their heirs against the Government of Spain, in an interchange of notes between General Sickles, representative of the United States at Madrid, and Mr. Sagasta, Secretary of State for Spain, the instructions of Mr. Fish, then Secretary of State for the United States, and an eminent lawyer, were communicated to the Spanish Government in the following language:

The President contemplates that every claimant will be required to make good before the commission his injury and his right to indemnity * * * and it will be open to Spain to traverse this fact or to show that from any of the causes named in the circular of the Department of State of the United States of October 14, 1869, the applicant has forfeited his acquired rights. (See Moore, vol. 3, 2564.)

Attention is again called by the umpire to the claims of Narcissa de Hammer and Amelia de Brissot, heretofore referred to in this opinion and found in Moore, volume 3, 2457. This commission was very ably constituted. The opinions of each of the commissioners are remarkable for erudition and wisdom and have genuine weight in the reasonableness of their conclusions and the reasons which they give therefor. The claims of these two women appealed with peculiar force to the tribunal. They were widows of American citizens who were shot dead by Venezuelans while in the strict performance of their duty and without fault or wrong on their part. The indignities to the United States had been in no part atoned for and they were clear, unquestioned, and of a most serious and aggravating character. But in the opinion of each member of the tribunal its jurisdiction turned not on the original indignity to the United States but on the status of the claimants before the commission. Commissioner Little said in part:

The question of citizenship here is not a Federal or municipal one. Inasmuch as the legislation of the two countries of these subjects does not conduce to the same result in this case, that of neither can be looked to as determinative of the issue. This must be resolved from the standpoint of the public law. Thus considered, I think Mrs. Hammer and Mrs. de Brissot are not citizens of the United States within the meaning of the treaty. (Shanks *v.* Dupont, 3 Peters, U. S., 243.) Their claims must, therefore, be dismissed for want of jurisdiction. This, of course, is not saying that the United States has no cause for reclamation on the account of the killing of her citizens—Captain Hammer and Mr. de Brissot. It is only holding that under the terms of the convention the question is not submitted to us. It would be to go beyond the limits of just interpretation and to enter the forbidden domain of judicial legislation to say that claims on the part of citizens means or includes claims growing out of the injuries to citizens. (Moore, 2459–2460.)

[a] House Ex. Doc. No. 235, Forty-eighth Congress, second session.

Commissioner Findlay said in part:

I quite agree with Commissioner Andrade that Mrs. Hammer and Mrs. de Brissot can not be considered citizens of the United States invested with the right of prosecuting a claim against the Government of Venezuela. (Moore, 2460.)

And, after making this statement, he proceeds with an argument valuable to read, and concludes with the sentence following:

On the whole I think that we have no jurisdiction as to these particular claims.

In the memorial of Don José María Jarrero, under act of Congress March 3, 1849, to adjust claims of United States citizens against Mexico (Moore, 2324), it appeared that the original claim was in favor of a citizen of the United States, but that before the conclusion of the treaty between Mexico and the United States resulting in this commission it had been assigned to a Mexican citizen. The commission dismissed the claim, stating, among other things:

It matters not that the claim was American in its origin. It had ceased to be American at the date of the treaty, and the holder of it could not invoke the interposition of our Government for his protection.

In the case of L. S. Hargous *v.* Mexico, claims commission under convention of July 4, 1868, Thornton, umpire, gave the opinion dismissing the assigned claim, holding that the assignee must stand on the qualities of the claim. His opinion is worthy of careful study in connection with the principles involved by the case in this tribunal, and is found in Moore's International Arbitration, volume 3, page 2327. See also the Importers' case, Moore, volume 3, page 2331.

In Moore's International Arbitrations, volume 3, page 2388, there appear extracts from the published notes of the board of Commissioners, under the convention with France of July 4, 1831, where these rules were laid down as governing the board.

It was, of course, indispensable to the validity of a reclamation before the Commissioners that it should be altogether American. This character was held by them to belong only to cases where the individual in whose rights the claim was preferred had been an American citizen at the time of the wrongful act, and entitled as such to invoke the protection of the United States for the property which was the subject of the wrong and where the claim up to the date of the convention had at all times belonged to American citizens.

Again:

It was necessary for the claimant to show not only that his property was American when the claim originated, but that the ownership of the claim was still American when the convention went into effect. * * * Nor could a claim that lost its American character ever resume it if it had heretofore passed into the possession of a foreigner or of one otherwise incapacitated to claim before the Commission.

In the United States and Peruvian Claims Commission, which met at Lima, January 12, 1863, Mr. Benson, a United States citizen, had a claim against Peru, which he had previously assigned for value to one José F. Lasarte, a Peruvian citizen residing in the city of New York. Benson presented his claim to the Commissioners as a debt against Peru, saying nothing about the assignment; and Lasarte in the meanwhile presented the same claim, as assignee of Benson, as a claim of the United States. As a result the Commissioners dismissed the claim of Benson on the ground that he had parted with his interest to Lasarte, and had therefore no standing before the Commission. Concerning Lasarte it was held that he had no valid claim against the United States, because it was not a pending claim of a citizen of Peru

against the Government of the United States. Mr. Lasarte's claim against the United States was Mr. Benson's claim against that country, and it was impossible to maintain that the interposition of the United States with Peru in favor of Mr. Benson can be made to answer the solicitation of interposition against itself. (Moore, 2390.)

See the case of Julius Alvarez against Mexico, opinion rendered by Sir Edward Thornton, umpire, and delivered October 30, 1876 (Moore, 1353); by the same umpire (note on pp. 1353–1354), in the case of Herman F. Wulff *v.* Mexico, No. 232, as follows:

* * * The umpire is asked to amend his award of June 18, 1875, by making it absolute in favor of the administrator instead of conditional upon proof that the recipient shall be a citizen of the United States. The umpire can not acquiesce in the arguments put forward by the counsel for the claimant, whoever that claimant may be. He is of opinion that not only must it be proved that the person to whom the injury was done was a citizen of the United States, but also that the direct recipients of the award are citizens of the United States, whether these beneficiaries be heirs, or, in failure of them, creditors. The heirs are certainly benefited by being able to pay the debts of their deceased relative, even though the whole of the award may be swallowed up by the creditors. If there be no heirs and only creditors, the umpire is of the opinion that even those creditors who are the immediate recipients of the award must prove that they are citizens of the United States. The umpire thinks that the Commission can make no award except to corporations, companies, or private individuals who are citizens either of the United States or of the Mexican Republic, respectively.

Moore, 1353, lays down the rule thus:

On the other hand, where the nationality of the owner of a claim, originally American or Mexican, had for any cause changed, it was held that the claim could not be entertained. Thus, where the ancestor, who was the original owner, had died, it was held that the heir could not appear as claimant unless his nationality was the same as that of his ancestor. The person who had the "right to the award" must, it was further held, be considered as the "real claimant" by the Commission, and whoever he might be must "prove himself to be a citizen" of the Government by which the claim was presented.

That in such a matter as is now under consideration by the umpire the claimant Government is not proceeding primarily to punish for the governmental indignity named, but is rather acting as an international representative on behalf of the private interests of its subjects, gains force when we consult the language of the proposed general treaty for arbitration between Great Britain and the United States negotiated on behalf of their respective Governments by Hon. Richard Olney, Secretary of State, for the United States, and Hon. Julian Pauncefote, envoy extraordinary and minister plenipotentiary of Great Britain on January 11, A. D. 1897. Article VII of that treaty provides:

If before the close of the hearing upon the claims submitted to the arbitral tribunal, constituted under Article III or Article IV, either of the high contracting parties shall move such tribunal to decide, and thereupon it shall decide, that the determination of such claim necessarily involves the decision of a disputed question of principle of grave general importance affecting the national rights of such party, as distinguished from the private rights *whereof it is merely the international representative*, the jurisdiction of such arbitral tribunal over such claim shall cease, and the same shall be dealt with by arbitration under Article VI.

The attention of the umpire has not been brought to an instance where the arbitrators between nations have been asked or permitted to declare the money value of an indignity to a nation simply as such. While the position of the learned agent for Great Britain is undoubtedly correct, that underlying every claim for allowance before international tribunals there is always the indignity to the nation through its national by the respondent government, there is always in Commis-

sions of this character an injured national capable of claiming and receiving money compensation from the offending and respondent government. In all of the cases which have come under the notice of the umpire—and he has made diligent search for precedents—the tribunals have required a beneficiary of the nationality of the claimant nation lawfully entitled to be paid the ascertained charges or dues. They have required that this right should have vested in the beneficiary up to and at the time of the treaty authorizing and providing for the international tribunal before which the claim is to appear. That it was then vested has been held as sufficient, and subsequent events have been held as not devesting this vested right. This, however, is as far as any tribunal of repute has gone.

To have measured in money by a third and different party the indignity put upon one's flag or brought upon one's country is something to which nations do not ordinarily consent.

Such values are ordinarily fixed by the offending party and declared in its own sovereign voice, and is ordinarily wholly punitive in its character—not remedial, not compensatory.

It is one of the cherished attributes of sovereignty which it will not usually or readily yield to arbitrament or award. Herein is found a reason, if not the reason, why such matters are not usually, if ever, submitted to arbitration.

Inspection of the protocol of February 13, 1903, between Great Britain and Venezuela discloses in the preamble the occasion of arbitrating the existing differences and their scope, as follows:

> Whereas certain differences have arisen between the United States of Venezuela and Great Britain in connection with the claims of British subjects against the Venezuelan Government.

Article III submits to arbitration certain of these claims of British subjects, reserving those dealt with in Article IV. Whence it follows that nothing being submitted to this tribunal except the claims of British subjects, nothing else can be heard. An arbitral tribunal between nations is one of great power within the terms of its creation, but absolutely powerless outside thereof. Nothing can be within its terms except such as is there by the clear and express agreement of the high contracting parties. The umpire fails to find in the solemn covenant creating this tribunal any authority given it to pass upon any other than claims of British subjects, or, in other words, and affirmatively, he fails to find that it has authority to pass upon matters resting solely in unatoned indignities to the claimant Government. Hence he holds it necessary to consider the questions raised by the honorable Commissioner for Venezuela, denying that any of the claimants in this case are British subjects or were such February 13, 1903.

The British Government contends, as in the Mathison case,[a] (*a*) that all the children born before the adoption of the constitution of 1864 are British, (*b*) that the two born in Trinidad are British, and (*c*) they admit that the four born in Venezuela after 1864 are Venezuelans while in Venezuela. They also contend that under the laws of Venezuela existing in 1853 and continuing to 1861 the wife of J. P. K. Stevenson, by the laws of both countries, became a British subject by her marriage and retained such nationality after his death without regard to domicile, subject to being defeated only (*d*) by subsequent marriage

[a] Page 429.

to the subject of a different nationality, (*e*) by actual naturalization in some other country; and that the law of Venezuela establishing a different status for the domiciled widow of a foreigner, passed after her marriage, but before her husband's death, does not affect such relation. That the Venezuelan law of 1873 and the Venezuelan constitution of 1861, for a woman married thereafter to the subject of a foreign country, relegates her to her original nationality after the death of her husband, if then domiciled in Venezuela, is not seriously questioned so far as the obligations of Venzuela are concerned.

The respondent Government claims, as in the Mathison case, that the constitution of 1864 differs only exegetically from previous provisions in their constitution, beginning with 1830, and that always the respondent Government had claimed to be citizens all born under her flag, of whatever nationality their parents. There are well-recognized exceptions to this rule, but they need not be named here, as they are not relevant to this discussion.

The umpire sustains this claim of the respondent Government consistently with his holding, and for the reasons and upon the authorities given, in the Mathison case (q. v.).[a] In the opinion of the umpire, if Mrs. Stevenson ever became a subject of Great Britain when in Venezuela it was not by the marriage in 1855, but by virtue of the marriage relation in 1873 under the Venezuelan law passed that year, heretofore referred to. Did she become a subject of Great Britain, while in Venezuela by virtue of the act of 1873; and if she did, did she retain that nationality after the death of her husband, under the facts and the law of this case? This is the first question of importance. That she was a Venezuelan, born in Venezuela and of Venezuelan parentage and always domiciled in Venezuela, both before and after marriage and since her husband's death, is not questioned. That the women of Venezuela, except as qualified by the law concerning marriage, take and retain citizenship under the same rule and conditions as men can not successfully be questioned. If Mrs. Stevenson became a subject of Great Britain at the time of her marriage with her husband—then and always a British subject during their married life—it was because of the force of the general international law and not because of any enactment of Venezuela up to that time. It can not be successfully contended, in the opinion of the umpire, that Venezuela was compelled to relinquish her claim to the citizenship of Mrs. Stevenson so long as they remained domiciled in Venezuela. What was the law of citizenship in Venezuela in 1855? Clearly, so far as it has appeared in this tribunal, and so far as the umpire has had opportunity to investigate, it was a law fixing citizenship upon *all those* born within her territory. If at this time the law of Great Britain gave to the wife of a British subject British nationality without reference to their domicile, it did not affect the status of such a wife in Venezuela as affecting Venezuelan interest while domiciled there.

In the judgment of the umpire, the act of 1873, followed by the constitution of 1891, was a concession of privilege and of comity in accordance with the general trend of opinion throughout the civilized world. A study of the language used will show its general permissive quality, enlarging the privileges of a married woman under such circumstances by the removal of the restrictions theretofore existing

[a] Page 439.

rather than the establishment or the assertion of new rights in Venezuela. As a whole, it was a surrender of things theretofore claimed. Theretofore the law, organic and statutory, in Venezuela was, once a citizen always a citizen, so far as the effect of marriage upon the citizenship of a woman is concerned. As changed, it released the Venezuelan claim of citizenship upon such while they remained married, provided the country of which the husband was a subject extended to her the privileges of a subject or a citizen, because of such marriage. If the husband's country did not give that privilege, then she was not to become a citizen of that country. If not a subject to that country, to what country was she subject? Clearly, a Venezuelan subject or citizen. She was to remain subject to the country of her husband's citizenship while she remained married. After the dissolution of her marriage, of what country was she a subject? Clearly, the intention was that her citizenship reverted to Venezuela. If, prior to 1873, she was hopelessly without the control of Venezuela and no longer of that country, in virtue of her marriage in 1855, Venezuela, by her act of 1873, was writing an absurdity. If until then there had been no recognition of a right of citizenship in another country attained by marriage to a subject of that country, then the law is written with unusual force and cunning. It is expressive and apt. The umpire prefers the opinion that in 1855 Mrs. Stevenson did not have the consent of Venezuela to any change of citizenship in virtue of her marriage to a British subject, and that in 1873 the law was changed so as to give such consent, certainly to those thereafter married.

Hence it follows that when Venezuela gave her consent to a citizenship, limited and qualified by subsequent events, to a woman marrying a subject of a foreign country, which country granted her citizenship because of such marriage, Venezuela gave such citizenship subject to the limitations and qualifications expressed in such law, and if thereby Mrs. Stevenson became a British subject it was to continue to her, so far as Venezuela should recognize it, only during her married life, and on the death of her husband she became again a citizen of her native land, then and always the place of her domicile. Hence the contention of the learned agent of Great Britain, which is presented with great force and learning, is held not to apply to the case in hand, because there never had been unqualified British citizenship in Mrs. Stevenson. The law of 1873 did not take away rights which had already attached to Mrs. Stevenson in the way of British citizenship, but rather it for the first time recognized and permitted such citizenship in any degree on the part of Venezuela.

This holding as to the law of Venezuela previous to 1873 and since is not inharmonious with the established laws of other and very important countries. The tenacious grasp of a country upon her native-born citizens is not peculiar to Venezuela; she has able and powerful contemporaries. Indeed, if the umpire is not misinformed, the honorable claimant Government for a long time denied the right of any of her subjects to expatriate themselves, however anxious they might be to do this and however solemn might be the proceeding which invested them with their new nationality. This holding as to the effect of the law of 1873 prevents the necessity of entering upon the discussion of the claim put forward that once British citizenship has fully attached no succeeding law of Venezuela could be allowed to take it away. The effect of this holding is to decide that British citizenship never

attached to Mrs. Stevenson by consent of Venezuela and in a manner to affect her interior policy, only while Mrs. Stevenson remained the wife of Mr. Stevenson. In the opinion of the umpire, then, the widow of J. P. K. Stevenson, from the moment of his death and during her entire widowhood, is, and as to Venezuela has been, a Venezuelan. Logically, he holds to the same effect concerning the children of the late J. P. K. Stevenson who were born in Venezuela.

The reasons which control the umpire in his decision as to the citizenship of the widow of Mr. Stevenson and of the children born in Venezuela do not apply to Juan and Guillermo, both of whom were born in Trinidad. They were born on British soil of a British father and of a mother who, by virtue of her marriage with a British subject acquired his citizenship, which remained until the death of her husband.

It is not claimed that they were born *in itinere* nor under other circumstances negativing the general rule. Hence they are of British origin. It remains to determine whether in virtue of anything which has transpired since their birth they have lost their British nationality and their right of intervention by the British Government in their behalf.

Juan, in 1896, was an amanuensis in the office of the city secretary or city clerk in the city of Maturín at a small monthly wage. This was when he was 23 years of age. He is shown to hold no other civil position or to have participated otherwise in the affairs of Venezuela.

Guillermo, in 1898, when he was 17 years of age, was an aid-de-camp on the staff of one of the generals of the Venezuelan Government. It is not shown that he ever held any other position, civil or military, or in any other way mixed in the affairs of the National Government.

They were not Venezuelan citizens by birth. This is admitted. By the constitution of Venezuela they who are alien born can only obtain citizenship through naturalization. They have never been naturalized. Service in military and civil life is in no sense an equivalent for naturalization. It confers no citizen privileges or benefits. It confers no right upon them to claim of Venezuela the immunities and protection of a citizen. It permits no claim on the part of Venezuela for compulsory service by them. By the treaty of Great Britain with Venezuela, as British subjects they were especially exempt from all military demands and requisitions in property and person. Such service as is here shown might suggest on their part a leaning toward Venezuelan citizenship, but it would be no more than a suggestion. It certainly was not so forceful and suggestive as a formal declaration of intention to become a citizen as is provided in the United States naturalization laws. According to Van Dyne's Citizenship of the United States, page 77—

> International claims commissions to which the United States has been a party have universally decided, whenever the question has been presented, that mere declaration of intention gave the person no standing before a commission as a citizen of the United States.

See also Moore, International Arbitration, pages 2549, 2550, 2553. See again Van Dyne's Citizenship, pages 78–81, wherein observe the claim of George Adlam *v.* The United States, before the Claims Commission under the treaty of Washington, May 8, 1871, between the United States and Great Britain, which is a case very much in point. The same case is also found in Moore.[a] These two sons are not Venezuelans. They were born British subjects; they are still such. They

[a] Pages 2552–2553.

have not broken their neutrality by acts opposed to the Government. They have been law-abiding and helpful, not harmful, to the land of their domicile. The claim in question had its origin in a British subject, J. P. K. Stevenson. At his decease it came by descent to the widow and the legitimate children of Mr. Stevenson. As held by the umpire herein, it lost its original status in regard to the widow and children born in Venezuela. It retains its original status in the persons of the two sons, who were born British subjects.

From the testimony received from the respondent Government since the umpire returned to the United States of America, there appears, casually, a statement that Juan had deceased recently. Since no reference is made to this fact by the representative of the respondent Government, the umpire has a right to assume that such Government regards the incident of his death not to disturb the status fixed in him at the time of the presentation of this case to the Mixed Commission. The Chopin case, found in Moore, International Arbitration, page 2506, is full warrant for such a conclusion. Such would be the opinion of the umpire independent of the Chopin case. It meets the requirements, viz: (*a*) British citizenship at the time of the origin of the claim; (*b*) British citizenship at the time of the presentation of the claim before the Commission. When thus presented, a right to recovery vested in those then having a lawful claim.

The decision of the umpire is therefore unaffected if since then Juan has deceased.

The claim of the widow and of the children, who are held herein to be Venezuelans, is disallowed without any prejudice to their rights as Venezuelans before any proper tribunal. Under the Venezuelan law of distribution, as it was at the time of the death of J. P. K. Stevenson, the widow and the children each take an equal share of his estate. There are, then, thirteen equal shares into which this claim is divided. Two of these shares are allowed. For a portion of the time covered by this claim the legal rate of interest in Venezuela was 6 per cent; for the remainder of the time it was 3 per cent. Beginning at the time the claim was presented to the Claims Commission of 1868–69 interest has been calculated at the legal rate. There is no proof that the respondent Government had been informed previously of the claims of 1859 and 1865. Those of 1869 originated after the convention creating that Claims Commission. Certainly the respondent Government could make no compensation until a claim had been duly presented, and hence it could not be, until then, in default. Interest as damages begins only after default.

The award will be made for £8,940.

PUERTO CABELLO AND VALENCIA RAILWAY COMPANY CASE.

A government is not liable for damages suffered by property which is situated in the track of war.

Where an agreement in a contract existed to refer all controversies to local courts, not more than the legal rate of interest can be allowed on amounts due the company when the Government insisted that such amounts were incorrect and the company had no resort to the local courts.

PLUMLEY, *Umpire:*

This is a claim presented by the British Government for and on behalf of the Puerto Cabello and Valencia Railway Company, asking

an award of £319,381 4s. 9d. on account of arrears of guaranty and accrued interest thereon, together with a small sum due for freight.

This case came early before the Mixed Commission, but its consideration was deferred for some time that a settlement might be secured between the company and the Government which would obviate the necessity of its determination by this tribunal. When it became evident that the parties could not reach a point of agreement the honorable Commissioners, with the efficient aid of the learned agents of both Governments, undertook to reach a decision. After careful and painstaking effort it was found impossible by the honorable Commissioners to reconcile their serious differences and the case was sent to the umpire for him to decide.

He acknowledges his indebtedness to the claimant company and its efficient secretary, to the learned British agent and the honorable Commissioner for Great Britain for the careful preparation and presentation of the several claims of the company and of the proofs in support of the same, both direct and collateral; also his like indebtedness to the respondent Government, its learned agent and its honorable Commissioner for a like painstaking presentation of the points in defense and the proofs to sustain them. But, notwithstanding the wisdom thus assembled in his aid, the umpire has found the consideration of the various questions in issue to be quite complex and not at all easy of safe and wise solution. He has given the matter his most careful, persistent thought and has brought to bear upon the various questions involved such authorities and precedents as were at his hands and has reached conclusions which he conscientiously believes to be approximately just and equitable.

The Puerto Cabello and Valencia Railway Company (Limited) was organized to take over a concession made to Messrs. Cutbill, Son & De Lungo and to their associates or successors by the Government of Venezuela, of date February 24, A. D. 1885, which concession was negotiated of that date by Gen. Guzmán Blanco, ambassador extraordinary of the United States of Venezuela, then resident in the city of London, England, and was approved and confirmed by the Congress of the United States of Venezuela sitting in Caracas on the 18th day of April, A. D. 1885.

Article 4 of said concession stipulated that the Messrs. Cutbill, Son & De Lungo and their associates and successors would organize a joint stock company (limited) for the construction and the working of the railroad provided for in said concession from Puerto Cabello to Valencia and to construct the same complete for the sum of £820,000.

Article 3 of the said concession settled the width between the rails and provided for the equipment of the road with locomotives, carriages, and wagons indispensable for the complete traffic, and having the solidity and modern quality of railroad construction, and having also the station houses and goods sheds indispensable for its use and for the line of the railway. The right to construct and to operate this railway was an exclusive one for ninety-nine years from the date of its completion. The Government also conceded free importation of all the materials, machinery, tools, implements, and provisions which might be required for the construction, maintenance, and working of the railway; freed its property during the said ninety-nine years from all taxes or like contributions of all and every kind; freed its employees from all military service; conceded 150 meters of land on each side of

the line of the railroad where the lands were public, and gave right of eminent domain over lands of private ownership, and permitted a free cutting of all timbers required for the construction of the railway in the forests belonging to the nation.

Article 19 of the concession provided that—

> All questions arising in respect to the fulfillment of this contract will be determined by the competent tribunals of Venezuela.

Article 12 of the concession provided that—

> The railway company shall have the benefit of the guaranty of 7 per cent on the total sum of £820,000 above referred to, which can be issued in ordinary shares and in bonds in the proportions most convenient to the company. The said guaranty to begin on the completion of the railway, ready to be opened for public traffic.

As a part of this concession the Government subscribed in ordinary shares at par to the amount of £160,000.

The claimant company was incorporated under the companies acts, 1862 to 1883, and was registered in England on the 26th day of September, 1885. Its capital is £820,000, of which amount the Venezuelan Government subscribed for £160,000 in the share capital and continued to hold these shares until March, 1896, when it sold them to the Southwestern of Venezuela (Barquisimeto) Railway Company, reserving its interest in all dividends accrued or accruing to that date.

The transfer of the concession by Cutbill, Son & De Lungo to the said railway company was made on the 29th day of September, A. D. 1885.

The share capital of the company was divided into 46,000 shares of £10 each. The balance of the capital was provided for by the issue of debenture bonds to the amount of £360,000; £20,000 of these were not issued in fact, but were retained in the treasury of the company, where they still remain, as the umpire understands it.

The railway was opened to public traffic and the guaranty began according to its terms on April 1, A. D. 1888, although the work of construction had not then been completed. The total amount expended on the contract of construction of the railway and equipment was £782,216 17s. 6d., leaving of the £820,000 the sum of £37,783 2s. 6d. The capital expenditure was increased from time to time, and, as is shown by the company's balance sheet of December 31, 1902, had amounted to £790,899 3s. 7d., leaving £29,100 16s. 5d. unexpended, of which the sum of £20,000 had been reserved by the company for working capital.

The respondent Government being in arrears upon its guaranty and having made representations to the claimant company of its inability to meet the agreement at 7 per cent, by mutual concession, hereinafter to be referred to in detail, on May 26, 1891, the guaranty was reduced from 7 per cent to 5 per cent per annum and the arrears up to December 31, 1890, inclusive, were discharged by the respondent Government.

For the year 1893 only, the company shows receipts in excess of the sum claimed by it in discharge of the guaranty of the respondent Government.

In addition to the questions arising under said guaranty, there is raised the question of liability or nonliability by the respondent Government for injuries received by the property of the railway company in the successful revolution of 1892 and the unsuccessful revolution of 1898.

The claim for a deficit of railway receipts to be made good to the company through the Government guaranty begins with the year 1891, and concludes, so far as this Commission is concerned, December 31, 1902. Connected with this question of guaranty is the disputed point of the right to the respondent Government to its share of the net earnings of the claimant company, when the guaranty of the Government is met, during the time the Government was a shareholder in said claimant company. The respondent Government also contends that this guaranty does not cover the £20,000 reserved as working capital.

REVOLUTIONARY CLAIMS.

It was settled for this Commission by the opinion of the umpire in the claim of the Bolivar Railway Company [a] that the respondent Government, subject to certain exceptions, was liable for the acts of successful revolutionists and for the acts of the titular government as well, the liability in either case being predicated upon the same state of evidential facts. The facts stated, constituting the cause of complaint of 1892, appear to come within this established rule of liability; hence it does not become necessary to take these sums away from the accounts and they are allowed as and of the annual accounts as presented. It is quite possible that if the umpire had before him the specific details of expenditure he might find it necessary to point out certain parts as being allowed distinctively on the ground of the responsibility of the Government for its own acts and the acts of successful revolutionists outside of its guaranty, and there might be some item that would be disallowed as not coming within either feature of the case; yet, viewed as a whole, being destitute of any such detailed information, he will pass the whole as a rightful charge, as above stated.

Concerning the sums charged of March 29 and of June 28, 1898, it is to be said that had these injuries been received at the hands of the Government, or of successful revolutionists, they might be allowed; but as the result of the acts of unsuccessful revolutionists, which is the character in which they appear before the umpire, they can not be allowed. As the property destroyed is clearly a part of the plant—a part of its capital expenditure—it does not come under the guaranty and therefore the Government is not liable under that head. Hence this amount must be deducted from the accounts of 1898.

The claim of November 11, 1899, falls within the general rule of nonliability for damages which occur in the track of war, or during battle, or bombardment, and can not be allowed. Being a part of the plant itself and therefore a part of the company's capital expenditure, it falls within the class referred to in the preceding paragraph and is, likewise, not within the guaranty. There is, therefore, no governmental liability under this claim, in either aspect, and it is disallowed.

THE £20,000 DEBENTURE BONDS NOT ISSUED.

Concerning the question whether the guaranty of the respondent Government was upon the fixed and certain sum of £820,000, or was upon the actual constructional expense, it may be said, that, fortunately, the Government and the railway company early concurred in

[a] Page 388.

their interpretation of this very general expression in the concession so far as to make clear that both held it to be a guaranty that the enterprise would yield annually a net revenue of 7 per cent on the capital expenditure necessary to the completion of the railway and its indispensable equipment, but whether that expenditure was fixed and determined in advance, or whether it was not to exceed a certain sum, seems to be the question undetermined and in dispute. As an estimate it was too high. It was agreed that the capital should be obtained through the issue of shares and bonds in such proportions of each as best suited the interests of the company. It is contended by the Government, and such has been its contention certainly since 1896, that the nonissued £20,000 of bonds are not entitled to the benefit of the guaranty.

If there had been no settlement and arrangement in 1891, the umpire would have no serious difficulty in sustaining the Government's contention. It is clear to the mind of the umpire that by the first arrangement it was a guaranty at 7 per cent upon the essential capital expenditure, which was not to exceed £820,000. There is evidence that such was the better judgment of the directors of the railway company.

On May 26, 1891, there was made a new agreement between the claimant company and the respondent Government founded upon a new consideration, namely, upon mutual concessions. In consideration, among other things, that the Government would pay upon the fixed sum of £820,000, the railway company consented to reduce the guaranty to 5 per cent per annum, and in consideration that the railway company would consent to such reduction the Government consented to accept the fixed sum £820,000 as the basis of reckoning. This is the umpire's interpretation of their agreement, which is in terms as follows:

ARTICLE I. In view of the difficulties which have presented themselves, and of those which might present themselves in the future, with regard to the payment of the 7 per cent guaranteed by the Government of Venezuela to the Puerto Cabello and Valencia Railway Company, inasmuch as the said guaranty weighs very heavily on the country, and this company being perfectly organized, the Puerto Cabello and Valencia Railway Company agrees that from the 1st of January of the present year of 1891, the Government of Venezuela only guarantees an interest of 5 per cent annually on the sum of £820,000, which is the fixed capital in the original contract, and upon which the guaranteed interest has up to now been calculated. Consequently article 12 of the 24th February, 1885, remains annulled, relative to the 7 per cent.

To remove any question upon this point, to settle favorably to itself a mooted question of this importance, was one of the very important considerations for the large concession here made by the claimant company.

Solely because of this agreement and of the consideration entering into the same, it is the judgment of the umpire that the fixed sum of £820,000 was then made the certain and established basis upon which to reckon said guaranty.

WORKING EXPENSES UNDER A GUARANTY.

It having been determined by the apparent agreement and acquiescence of both of the parties to the contract that the guaranty stated in such general terms in the concession was in fact a guaranty of net revenue, it becomes important to determine what charges are to be included in working expense and, therefore, to be deducted from the

gross receipts in order to leave that net annual revenue which it is guaranteed shall equal £41,000. In principle there is apparent agreement. In details of application of this principle there is apparent serious disagreement.

The claimant company, through its efficient secretary, has supplied the Mixed Commission with the annual, or semiannual accounts of about 80 different railroads situated in various parts of the world, railroads both large and small, guaranteed and unguaranteed. These accounts were furnished in order that the tribunal might, through inspection and comparison, ascertain, if such was the fact, a general method of railroad bookkeeping and a general placing of certain expenses to the different accounts, as, for instance, working expense, and under that head the respective subdivisions to contain in the revenue account both the income and the expenditures from all the different sources and occasions of each. The umpire has availed himself of this large area of opportunity, and has carefully examined them with reference to the different classes of expenditure and the proportionate charge to capital, gross income, and length of railway. He appreciated at the start that a small railway would have, relatively, a larger charge for oversight and management than a larger railroad, and the inspection which he has made proves his anticipations to be correct.

From some of these railway accounts he has been unable to determine the length of the railway in miles, and in a few instances he has not been sure of the proper exchange to be reckoned, and therefore he has not taken them into consideration. In regard to the average expense per mile of railway, placed by the different accounts to general charges or equivalent expressions, he has assembled 50 railway accounts, has ascertained the number of miles in each of these 50 railways, and the expense per mile existing under the head of "general charges." The railways so analyzed by him have varied in extent from 21 miles to many thousand. The highest charge per mile under this head has been £274 per mile and the lowest found was £16. The average expense under this head is a little less than £80. There are 34 miles of railway belonging to the claimant company, and at this charge per mile the "general charges" would be £2,720. The "general charges" allowed by the umpire range from £6,070 in 1891 to £3,234 in 1902 and the average expenses per mile from a little more than £172 in 1891 to a little more than £95 in 1902. As the average found for the 50 railways, as above stated, is £2,720 for 34 miles of railway and the average per mile is £80, it is readily to be seen that the lowest allowance made by the umpire is in excess of the average.

The "general charges" allowed by the umpire, as explained in another part of this opinion, divided by 34, the number of miles of railway, giving the expense per mile under that head, will be here stated:

1891	£6,070÷34=£178+
1892	4,861÷34= 143−
1893	4,791÷34= 141−
1894	5,298÷34= 155+
1895	4,549÷34= 133+
1896	5,275÷34= 155+
1897	4,499÷34= 132+
1898	4,273÷34= 125+
1899	4,023÷34= 118+
1900	3,557÷34= 104+
1901	3,535÷34= 104−
1902	3,234÷34= 95+

This makes for the twelve years an average of £132 to the mile and an average allowance for the 34 miles of £4,488.

The umpire will now name the railways which he has examined and used to obtain this average of "general charges" per mile as hereinbefore stated. He will state the companies both by number and by name. Should he have occasion hereinafter to refer to these different companies or any of them he will employ the number only. These numbers are, of course, of his own adoption, although they correspond to the numbers placed before the different accounts by the secretary of the claimant company up to and including No. 53; thereafterward the numbers used by him and by the umpire do not correspond.

No. 1. The Great Eastern Railway Company.
No. 2. London, Brighton and South Coast Railway Company.
No. 3. Great Central Railway Company.
No. 4. Midland Railway Company.
No. 5. Great Western Railway Company.
No. 6. The Great Northern Railway Company.
No. 7. London and Southwestern Railway Company.
No. 8. Lancashire and Yorkshire Railway Company.
No. 9. London, Tilbury and Southend Railway Company.
No. 10. Breton and Merthyr-Lydfil Junction Railway Company.
No. 11. Alexandra (Newport and South Wales) Docks and Railway.
No. 12. Isle of Wight Central Railway.
No. 13. Great Northern Railway Company (Ireland).
No. 14. East Indian Railway Company. Guaranteed by British Government.
No. 15. Assam-Bengal Railway Company. Guaranteed by British Government.
No. 16. South Indian Railway Company (Limited). Guaranteed by British Government.
No. 17. The Barsi Light Railway Company (Limited).
No. 18. Bengal-Dooars Railway Company.
No. 19. Bengal Central Railway Company (Limited). Guaranteed by British Government.
No. 20. The Bengal and Northwestern Railway Company (Limited).
No. 21. Rohilkund and Kumson Railway Company (Limited). Guaranteed by British Government.
No. 22 to No. 24 inclusive. The Nisam's Guaranteed State Railways Companies (Limited).
No. 25. Bengal Nagpur Railway Company (Limited). Guaranteed by British Government.
No. 26. Bengal Company (Limited). Guaranteed by British Government.
No. 27. Indian Portugal Guaranteed Railway Company (Limited).
No. 28. Burma Railways Companies (Limited). Guaranteed by British Government.
No. 29. Demerara Railway Company. Guaranteed by Great Britain.
No. 30. Quebec Central Railway Company.
No. 31. Egyptian Delta Light Railway Company (Limited). Guaranteed by Egypt.
No. 32. Sungoi (Malay Ujong Peninsula) Railway Company (Limited). Guaranteed.
No. 33. Canadian Pacific Railway Company.
No. 34. Grand Trunk Railway Company.
No. 35. New York, Ontario and Western Railway Company.
No. 36. Missouri, Kansas and Texas Railway Company.
No. 37. The Mexican Southern Railway (Limited).
No. 38. The Western Railway of Habana (Limited).
No. 39. Macuta Railway Company (Limited). Guaranteed.
No. 40. The Cuban Central Railways (Limited).
No. 41. Leopoldina Railway Company (Limited). Guaranteed.
No. 42. The Interoceanic Railway of Mexico.
No. 43. Espirito Santo and Caravellas Railway Company (Limited). Guaranteed.
No. 44. Salvador Railway Company (Limited). Guaranteed.
No. 45. Lima Railway Company (Limited).
No. 46. The Dorada Railway Company (Limited.)

No. 47. Alegeciras Railway Company (Limited).
No. 48. Great Southern of Spain Railway Company (Limited).
No. 49. The Zafra and Huelva Railway Company (of Spain).
No. 50. Alsoy and Candia Railway and Harbor Company (Limited).
No. 51. The Ottoman Railway Company, from Smyrna to Aden.
No. 52. West Flanders Railway Company. Guaranteed.
No. 53. The Metropolitan Railway Company (Limited).
No. 54. Bohia Blanca and Northeastern Railway Company (Limited).
No. 55. Argentine Great Western Railway Company (Limited).
No. 56. The Northwestern of Uruguay Railway Company. Guaranteed.
No. 57. The Great Western of Brazil.
No. 58. The Midland Uruguay Railway Company (Limited). Guaranteed.
No. 59. The Central Uruguay Railway of Montevideo (Limited).
No. 60. Buenos Ayres and Pacific Railway Company (Limited).
No. 61. La Guaira and Caracas Railway Company (Limited).
No. 62. The Bolivar Railway Company (Limited).
No. 66. Venezuelan Central Railway Company (Limited).
No. 69. Atchison, Topeka and Santa Fe Railway Company.
No. 70. Chicago, Burlington and Quincy Railroad Company.
No. 71. New York Central and Hudson River Railroad Company.
No. 72 to No. 75, inclusive. Pennsylvania Railroad Company.
No. 76. Reading Company.
No. 77. Baltimore and Ohio Railroad Company.
No. 78. Erie Railroad Company.
No. 79. Lehigh Valley Railroad Company.

Nos. 32, 38, 39, 40, 42, 43, 44, 45, 46, 49, 50, 52, 53, 54, 55, 56, 57, 60, 61, 62, 63, 65, 66, 67, 68 were not used in determining the average general charges per mile of railway, either because the mileage was not given or that for some other reason it was not available to the umpire's use in that respect.

Inspection of the accounts of these different railway companies was made for the purpose of ascertaining in detail their charges to revenue account in comparison with the different items so charged by the claimant company. With quite possibly some errors, the following results were obtained:

No. 1. There were no charges to revenue account for depreciation and no charge for renewals as such.

No. 2. There were no charges for depreciation or for renewals as such in revenue account, and general insurance was paid out of net revenue.

No. 3. There were no charges for depreciation or for renewals as such in revenue account.

And the same may be said of Nos. 4, 5, 6, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22 to 24, inclusive, 25, 26, 27, 28, 32, 35, 36, 42.

Of No. 7 the same may be said as of No. 3, so far as revenue account is concerned; but in net revenue there is found a reserve for renewals.

In No. 8 there is no charge for depreciation, but an amount is set aside out of revenue for renewals.

No. 9 sets aside in revenue account an amount for depreciation of locomotives, carriages, and wagons as a special fund, and sums are set aside to renew permanent way, to construct station buildings and to make additions and improvements to stations and signals.

In No. 13 interest was paid on the reserve fund from net revenue, and no insurance was charged against the general revenue account.

No. 30 is destitute of charges, the same as No. 3, and places cost of ballasting, compensating claims, etc., in net revenue.

No. 38 has no charge for depreciation and does not place renewals in current expense.

No. 40 is the same as No. 3 in regard to depreciations and renewals, but places the amount for exchange in net revenue.

In No. 41 it is stated that there is no charge for depreciation of furniture; "it is paid for when it occurs." The loss or profit of exchange is placed in net revenue "when it occurred."

No. 44 has a charge in revenue account for depreciation of furniture and the difference in exchange, but not for renewals.

No. 46 places a charge for depreciation of furniture in net revenue.

No. 47 places a charge for depreciation of furniture, and also a difference in exchange in net revenue.

No. 49 places its loss on exchange in revenue account.

No. 50 charges for depreciation of rails and rolling stock for the year in revenue account; also charges off against that account bad debts, loss on its exchange, and interest on debenture bonds, etc.

No. 51 charges interest, commission, and exchange against the revenue account.

No. 64 charges loss on exchange and furniture depreciation to net revenue, and has no charge for renewals as such.

No. 65 charges loss on exchange and commissions, etc., in net revenue, but has no charge for depreciations or renewals as such.

No. 66 puts loss on exchange in current-revenue account.

If the umpire has not erred in his examination, the following railways are those having guaranties from the British Government, viz: 14, 15, 16, 19, 21, 25, 26, 28, and 29; and if he is not in error there are guaranties by other governments in Nos. 22 to 24, 27, 31, 32, 41, 44, 56, and 58.

The umpire has carefully analyzed the accounts of all these companies, excepting a few not easily reducible to pounds sterling, and has compared "gross receipts" with "general charges," as well as "capital expenditure" with the same, and he is made to know from these examinations that the average per cent charged is much less in these companies than is the per cent allowed by the umpire in these two regards in the allowance which he has made for "general charges" during the years over which his inquiry extends, in connection with the claimant company's "gross receipts" and "capital" on the one hand and "general charges" on the other.

The examination of the accounts of these different railways in regard to the class of expenditure which has been regarded as proper to be charged to capital expenditure instead of to revenue account, or even to net revenue, shows that the different companies have had a wide area of plan and method, but that the usual rule is not to charge to revenue account anything in the way of construction, although it may be of a minor character. Among the items charged to capital expenditure taken from the accounts of these different railway companies are found the following, namely: New engines, carriages, gas fittings for carriages, screw couplings for cattle wagons, continuous brake works, additional machinery, additional cartage stock, widening lines, additional works at stations, new docks, enlargement of stations, extension of shops, additional sidings, new works, remodeling of goods yard, engine shed, offices, additional improvement of water supply, sheds, reconstruction of viaducts, conversion of brakes, automatic machinery, tools for companies' workshops, cottages, enlargement of yards, heating apparatus, lighting, fencing road crossings, increasing waterway, deepening foundation of bridges, repairing damages by

floods, ballast and permanent way, bridge of two spans of 30 feet to each span in place of one span of 20 feet, two horse boxes, alterations and additions to tramways, buildings, custom warehouse, surveys, new culverts and cattle guards, medicine chest, engineers' instruments, office furniture, lights, barges, tugs, water service, turntable, receiving shed, drainage, water meters, additions to boilers, paving new yard, oil tanks, water tank, new signals, drinking trough, extension of cross siding, alteration to sidings, extension of telephone wires, installation of electric lights in coaches, new level crossings, bell signals for level crossings, strengthening bridges, renewal of line.

As a part of the documentary evidence introduced by the claimant company are letters from the secretaries of the various South American railway companies, for the most part guaranteed, together with a copy of a part of the concession made by Chile to guaranteed railways and the Republic of Uruguay concerning the same.

In the letter of the secretary for the Brazil Great Southern Railway Company (Limited), of date April 28, 1903, he speaks of London office expenses, maintenance of way, works, and station, and repairs of rolling stock as being approved by the Brazilian Government, which Government is guarantor of that railway in terms very largely like the guaranty in question. It will be observed that there is no statement that renewals of these different kinds of property were either claimed or approved by the Brazilian Government. In regard to exchange he says:

> Notwithstanding the great depreciation of the milreis the Government insists upon the accounts being kept at the par value (2s. 3d.).

The Government of Chile gave a railway concession to Mr. Gustave Lenz in 1884, and a portion of that concession is made a part of this documentary evidence. From that part of the Chilean concession which is submitted it is learned that there is a guaranty of 5 per cent per annum, at a certain fixed exchange value, for twenty years on the fixed and certain sum of $30,000 for every kilometer of the line delivered for public use and that when the net proceeds exceed this 5 per cent the excess goes to the Government treasury to aid in reimbursing the Government for the sums paid out under said guaranty. These net proceeds are settled at 40 per cent of the gross proceeds for the first ten years and at 45 per cent for the remaining ten years. But by far the most important and valuable single document submitted by the claimant company, outside of its own reports and papers, is the document containing the "Regulations for fiscal intervention in railways guaranteed by the State," prescribed by the Republic of Uruguay.

Article 7 of said regulations states the books which the companies must keep for the exclusive service of the bookkeeping relating to the Government, and to that end these requirements are made:

> *a. The traffic receipts*, according to the monthly reports which are sent in from the station, and other operations which may be regarded as receipts from the working of the line.
>
> *b. The expenses of working*, which will include wages and salaries due to the staff, consumption charges, and those for materials and labor employed in the repairs of the line, and their maintenance in a sufficient state for service.
>
> *It is understood that every class of construction which may imply improvements of the line, as also other extraordinary expenses foreign to the working will be considered as capital expense, and consequently ought not on any account to figure in its ledger.* (See art. 18 of law of 27th August, 1884, and also arts. 25 to 28, inclusive, to these regulations.)
>
> (The italics are in the original.)

In article 24, under chapter 8, supplementary, there are found the following provisions:

The charges for maintenance and working, to which paragraph *b* of article 9 refers, will comprise:

First. All the ordinary and extraordinary repairs which may be of a necessary character.

Second. Taxes of all kinds paid by the companies to the state, and custom-house duties, should there be any.

Third. The general estimate of employees on salary or by day, including the London board.

There are excepted from these charges:

First. The interest and amortization on arrangements made by the companies, and especially those which the latter may have made for the carrying out of works, in cases where the capital guaranteed by the state has been insufficient.

Second. Amounts invested in favor of establishments which do not exclusively pertain to the working of the railway.

ART. 25. From the working account there will also be excluded the expenses which may pertain to capital account (cuenta de capital) and first establishment charges (primer establecimiento), as, for example:

The finishing of works, whether noted or not in the official report of the provisional approval of the works or at the time of delivering the lines over for working.

The expenses which may result from works executed in a notoriously defective and insufficient manner, or which may have to be rebuilt or added to within a very short time after opening the line to public service.

Works destined to secure drainage, the construction of which had been delayed until the line had commenced working.

Cuttings which may have to be consolidated and widened.

Embankments whose slopes may have to be cased.

Works situated in the proximity of level crossings (art. 18 of the reglementary decree of September, 1884), and which have not been made before opening the line for traffic.

The erection of palisades or barriers (art. 17 of decree named), the execution of which may have been omitted before handing the line over to public service.

The fencing (art. 30 of the same), which may have been omitted.

ART. 26. The charges more or less directly necessary for the working up of traffic and which, by article 18 of the law of 27th of August, 1884, refer to the *improvements which ought to be computed as net revenue* (should they figure in the accounts) are the following, commissions excepted:

Works for widening stations, laying second lines or sidings, increase of rolling stock, construction of engine sheds, construction of repairing sheds, construction of roofs of goods sheds.

The installation of water stations (*tomas de agua*) for the engine service, with tanks or deposits.

The installation of turntables and cranes in the stations which may not have them at present.

There are also comprised in this category:

All classes of reconstruction, such as larger water tanks, change of turntables, cranes of larger dimensions, and every class of work it may be necessary to reconstruct with new or different materials.

All these changes correspond to capital account.

To avoid a double employment of the account for original installation, the amount corresponding to provisional installation will be charged to maintenance.

ART. 27. The companies will give previous notice to the control office of all classes of work to be executed, whether as repairs or constructions required to keep the line in an efficient state for service, such as works of art in general, raising embankments, ballasting the line, etc., for which purpose they will send the plans of said works and the estimates, with full details, to the control engineers.

ART. 28. Without the previous approval of the control engineer in writing, all works provided for in the foregoing article which may be effected on the line will be considered as improvements, or for the private convenience of the companies, and consequently will not enter into the category of working expenses.

In addition to this documentary evidence and with reference thereto the umpire has consulted the authorities accessible to him which bear upon such matters, and after careful reading and thought he has decided to adopt the following as correctly stating the working basis, viz:

The phrase "net earnings" has been defined as "the excess of the gross earnings over the expenditures *defrayed in producing them*, aside from and exclusive of the constructing and equipment of the works themselves." (23 Am. Eng. Encycl. of Law, 1st ed., 612.)

Citing Bradley, judge, in Union Pacific Railroad Company *v.* U. S., 99 U. S., 402. Also, citing Belfast, etc., R. Co. *v.* Belfast, 77 Me., 445, where Peters, chief judge, defines the net earnings of a railroad as—

The gross receipts less the expenses of operating the road to earn such receipts. Interest on debts is paid out of what remains—that is, out of the net earnings. * * * When all liabilities are paid, either out of the gross receipts or out of the net earnings, the remainder is the profit of the shareholders to go towards dividends, which in that way are paid out of the net earnings. (2 Cook on Corporations, 5th ed., 1165, sec. 546, note 5, citing in said note St. John *v.* Erie Railroad, 10 Blatch., 271, 279; s. c. affd. 22 Wall., 136; Warren *v.* King, 108 U. S., 389.)

A distinction quite usually recognized is made in the books between net revenue and net profits. Out of the former floating debts are to be paid and the interest thereon and interest on the funded debts. Out of the former a reserve is made for depreciation and for renewals; allowances for losses are set aside, and all permanent improvements of roads and rolling stock, or of additions thereto, or extensions thereof are paid when not charged to capital expenditure.

On consideration of the evidence adduced and herein referred to, on consideration of the law applicable to such matters herein referred to, and in virtue of his duty to decide all questions submitted in accordance with justice and equity, the umpire decides that in this case the proper test to be used to determine what are or are not working expenses is found in answer to the question, Is it an expense which aided in or was a necessary incident to the production of the gross receipts? Such expenses, when deducted from the gross receipts, will show the net earnings for any given year. Whatever of expense, whatever of payment made which does not fall within the fair scope of this test must be charged elsewhere than to working expenses. There may be large net revenues and yet there be no dividends, because of the necessary payments therefrom, and the wise, prudential setting aside of sums of money as reserves for renewals, extensions, and betterments, all which may be provided for, if such be the will and policy of the shareholder, out of net revenues, but none of them are working expenses in the sense to be used here and are not, as against the respondent Government, to be chargeable to the gross receipts. With the plant all provided in advance, did the given expense aid, or was it properly incurred, in gaining gross income? If yea, then it may be rated as working expense; if nay, then it can not be.

In many—indeed, in most—particulars, this has been the plan of bookkeeping pursued by the claimant company, but there are some exceptions. The company has reserved out of net revenue a fund to provide for additions to its rolling stock; it has established a renewal fund and has supplied it from the net revenue; it has paid the interest on its debenture bonds out of net revenue; out of the same fund it has cared for its doubtful assets; it has paid its income tax and some of its traveling expenses out of net revenue. But, on the other hand, it has also

placed in working expense a certain annual charge for renewal of locomotive and a certain annual charge for depreciation of furniture; it has charged to working expense money paid for insurance of the property of the company; it has charged similarly payments made on account of exchange between Venezuela and England of the money earned by the company in Venezuela; it has charged to this same account all of the expense of the company in England, and during a portion of the time, at least, it has charged to working expenses the cost of its agency at Caracas.

Were it not for the question of guaranty which rests upon net revenue as the determinable quantity of its annual responsibility it would not be of serious importance whether this or that should be placed to working expense or deducted from net revenue; but as the matter stands before the umpire this question assumes great importance.

In the judgment of the umpire it is not what shall be deducted before a dividend may be declared and is determinable by no such standard. It is, what are the revenues in hand for all purposes after deducting that, and that only, which is properly chargeable to operating expenses? The test which the umpire will employ has already been stated and is found in this expression:

> Net earnings are properly the gross receipts less the expenses of operating the road to earn such receipts.

Those expenses of operating which aid or are intended to aid in its earnings, which result from endeavors to earn, or which are essential to the existence of the company are the only expenses to be charged to gross receipts against this guaranty.

Apply this rule to the accounts of the company as presented in the abstracts of expenditure on revenue accounts.

There first appears a charge of "repairs of station and building." It is the opinion of the umpire that there can be no fair question concerning the propriety of this charge. These buildings and stations were furnished as a part of the capital expenditure and now aid in producing the gross annual income; they are one of the means whereby the patronizing public have convenient access to the cars and proper protection for themselves and their freights. Betterments and improvements should not be included, and presumably they are not. The language employed would exclude such. These repairs are necessary to keep up their efficiency, to continue their valued service. Unless these are kept in a fair state of preservation the company would be unable to properly serve the public and must lose at least a measure of its patronage. Having furnished them as a part of its capital expenditure the company may make to them ordinary repairs out of its gross income, because such repairs come properly and easily within the established test.

Then come "repairs and removals to permanent way." Under this general charge is found maintenance, ballasting, clearing landslides, rails, fastenings, and sleepers. If these charges cover only ordinary repairs necessary to the running of the road, they come under the same rule already promulgated concerning repairs to stations and buildings. Examination of some of the early charges, especially for sleepers, rails, and fastenings, excites wonder that so large a sum should be so soon required in the respect named, and suggests strongly that these repairs so soon made might well have been to take the place of unfit materials when first laid down; but no such inference can properly be

drawn to be acted upon and the umpire is relieved from any duty in this regard, as the objection of the Government does not rest at all upon such a state of facts, but rests instead upon the hypothesis that as charged they are not proper working expenses. Hence, while if he had the details before him and they were specifically objected to, the umpire might find that some of the items charged under this head were of the nature of betterments and improvements and so not chargeable here; without these details and without such specific objections it remains for him to decide upon the charges as they appear, and as charged he finds that since they are essential to the earnings of the gross income, since the expenditure is incidental to and connected with the continuing efficiency of the plant, since such repairs must have been in the mind of the guarantor as expenses incident and essential to the maintenance of the enterprise, they are properly chargeable to the gross receipts. A similar line of reasoning cares for repairs and renewals of bridges, walls, culverts, and drains, to locomotive, carriage, and wagon repairs, to water supply, to workshop, and to repairs to machinery and tools. The wages of the operatives, employees, foremen, and clerks in these several lines and in the more immediate operation of the railroad do not permit of question, if the guaranty is allowed to rest, not upon the gross income, but upon gross income less operating expenses.

Similar reasons apply to the charge for telegraph expenses. Under the head of general charges, that which has already been said applies with equal force to the administrator and staff and storekeeper and staff. An efficient superintendence and direction of the energies of the subordinates; a careful prevision and supervision of its affairs are easily most important factors in the gross earnings of the company, in the husbanding of its resources, in the safeguarding of its line and of its property, in the marshaling and management of its business. It will be borne in mind in all these matters that no details are before the umpire. It is the general character of the charge alone with which he has to deal. Being such, and such only, he must hold the charge last above referred to to be proper and necessary in the development and management of the company's business and as easily passing the established test. For these there must be an office or offices, hence office expenses are allowed; for the conduct of its business there must be stationery, telegrams, and postage, and these are allowed. To incite and procure patronage reasonable advertisement is no doubt necessary, and it is allowed. There must of necessity be some traveling expenses. If the question were as to amount and the details were before the umpire some of the annual charges in this regard might well be carefully examined. For instance, in 1891, when these expenses amounted to £713 1s. 6d., or about £21 to the mile, or over £2 to the day, including Sundays. But there are no details before the umpire and he can only deal with general features. Superintendence of a railroad, care for its line, its properties, and the like require more or less traveling, and they are therefore a proper charge against the gross income.

The umpire understands the charge for medical attendance to be for services rendered to employees and passengers, if accident and injury occur. If this is a correct view, and he has no doubt that it is, then he considers such expense as a wise use of the gross income and as easily passing the adopted test.

Similarly the law charges. No suggestion is made that they have to do with other than the incidental matters which necessarily arise in the operation of a railway from year to year, and they are therefore in aid of its gross income. In protecting the company against unjust claims, in giving advice to promote wise action on the part of its officers, in asking and passing upon its current contracts a good lawyer could and presumably did greatly aid and protect the company, enhance its prosperity, and either increase its earnings or prevent their unlawful diminution. Therefore this charge in the Valencia account passes the required test. "Sundry expenses" and "compensations and allowances" having been before the Government in many annual accounts, and meeting with no specific objection, are rightfully assumed by the umpire to be not open to objection and are rightfully considered by him as containing items in detail not objectionable to the Government and of a character beneficial to the company in aid of its annual receipts or as necessarily incidental to its earnings. It would certainly be unfair to the company to assume to the contrary when the question easily could have been raised and the character of such of those charges as were objectionable have been exploited before him for his consideration and decision.

Under the head "General charges, London," the remarks made under the head of "General charges, Valencia," may be held to apply here, and so printing and stationery, office rent and cleaning, advertisement, postage, and telegrams pass the required test. The Government must have reckoned in reference to such expense when it made its guaranty. The company being a British company it necessarily must have its office in England, hence reasonable rent and care thereof are proper charges. In the absence of proof, or even suggestion, to the contrary, the umpire, in fairness to the company, must hold the presumption that those were in aid of income.

Traveling expenses in England do not appeal to the umpire as susceptible of any such finding, and, so far as they are specifically stated, he will feel bound to disallow them, as they apparently fail to come within the established test.

The charges for directors, auditors, trustees, and other officers in London are disallowed. It is true that the concession provided for the organization in London of a joint-stock company to construct and to operate this railway. Such being the agreement, there is an assumed contract to permit the necessary and reasonable annual expense attending the corporate existence of such company. This reasonable annual expense must be measured by the importance of the railway and the size of its annual income. It has done a small business only, and the general charges of London and Valencia are too large for the business. Gross income bears pretty nearly all its fair share of the burden when it cares for the services which produce it. This production is all necessarily Venezuelan in its character, quality, quantity, and origin. Management in Venezuela has a direct and important bearing upon gross income. Official service in London is of no value to that income any further than it is essential to the existence of the company. The greater part of these official cares in London deal only with the wise administration of net revenue as between the company and its creditors, between the company and its shareholders, in regard to reserves, renewals, and dividends, and therefore the greater part of such expense should be placed upon the department which causes it or which it

serves. The umpire has learned from the inspection he has made of other guaranteed companies, even including those of Uruguay, that some of this expense is allowed as against gross income, and were there only this question to consider he would allow a certain round sum for each year. But he is conscious that he has allowed a considerable amount each year under working expense which should have been charged either to net revenue or capital expenditure. He could make no deductions, for he had no details. He has decided to make a set-off of the amount covered by this head to meet such allowances, feeling that thereby he does no injustice and establishes no noxious precedent.

Insurance is for the protection of the capital of the company. It is a wise provision against serious loss of its capital. If fire occurs and destruction follows, the charge for rebuilding, in the judgment of the umpire, could not be placed in working expense as against the Government's guaranty. The means of reconstruction must be found in such cases in net revenue or in capital expenditure. Hence, the annual expense to protect net revenue or capital account must be charged against the account it protects, which is not gross receipts, and it is therefore not a part of working expense. It does not at all aid in the production of gross income. It utterly fails to pass the required test, and as against the Government and its guaranty must be disallowed.

Exchange is subject to the same objection in the main. It is true that so far as it was incurred in payment for stores and for materials and the like, where such payments were made to secure a cheaper article and at a lesser expense, it might well be considered, and might well have been charged as a part of the cost of those materials and stores; and if the umpire had such charges before him properly segregated from the general sum, he would be pleased to allow them. Inspection, however, will determine that, as a rule, the greater part of this exchange was not incurred in the payment for stores from abroad. The whole amount of stores got in all lines in 1891 amounted to £5,410 7s. 6d., and if there be added all of the London general charges which are allowed herein against working expense the sum is £6,341 12s. The balance to net revenue account that year was £32,008 9s. If we add to £6,341 12s. the sum of £1,943 10s., which is the amount disallowed in the London general charges, there is a total sum of £8,285 2s., which added to the net revenue account makes, approximately, the sum sent to London, viz, £40,294 11s. This assumes that all stores were bought abroad. The share in the exchange expense for such stores that year would be, approximately, as 40 to 5. The whole exchange charged is £140 18s. 9d. The exchange for stores therefore would be, approximately, one-eighth of this, or a little over £17, which is upon the assumption, as stated before, that all stores were bought abroad. If the umpire knew that such was the case he could allow this sum of £17, but as he knows nothing as to where the purchases were made he can make no correct division, and he is again compelled to disallow all, because he has not the details and because, in principle, exchange, as a whole, is objectionable as a charge upon working expense. It is a proper charge upon the account which it aids, which is not gross receipts, save as to an inconsiderable and indeterminable part.

In the judgment of the umpire, depreciation of furniture has no more place here than a general charge or several special charges for depreciation of the entire plant. That such depreciation exists, notably as to locomotives, rolling stock, ties or sleepers, rails, bridges, and the like, depreciations which can not be met by repairs, the same as in the matter of furniture, is apparent. None of these, however, are charged to working expense, nor should they be, nor should these be so charged. It is not an expense; it does not represent a cash outlay. It has not, in fact, lessened the gross income. It belongs with other proper reserves, to be set aside by the directors out of net revenue.

As between the income and the shareholder it is well placed; as between the company and its guarantors it has no place.

The same stricture is to be made upon the charge in the locomotive department for locomotive renewals. A proper provision for a foreseen demand is a prudential act; but it is to be so charged off, not as a part of the working expense, but out of net revenue in the reduction of net profits. It may come in before the division of net profits as dividends; but it is not a working expense; it is not a cash outlay; it is a retention of money by the company in its treasury to provide for a cash expenditure some time to be made. It has no place as against the Government as a guarantor.

The charge for the drawing office which appears in some of the accounts does not appeal to the umpire as being a proper charge under working expense. It must have reference to designs or plans for new structures and new property, for betterments, extensions, or improvements of the railway plant. It can not be in aid of repairs of machinery or of plant. So it appears to the umpire, and hence he disallows it. If any part of the charge was for work in aid of the gross income or was a proper charge against it as herein defined, the umpire regrets that it was not more clearly expressed. As it is stated, it is outside of the test adopted and can not be allowed as a proper charge against the guarantor.

As a part of the London expense all law charges are objectionable to the umpire as not being capable to assist in the production, or to protect the production, of the gross income of the company. Undoubtedly these charges were proper as against the company and would be a proper tax upon its net revenue, but they do not seem to have part in working expense as against the guaranty.

A similar conclusion is forced upon the umpire in regard to the Venezuelan agency fees. The work of this agency appears frequently before the umpire in the papers before him as representing the company in interviews with the Government in endeavors to agree with it and to secure from it the amount of the guaranty which the company claimed to be due. Shall the company charge against the Government the expense which it has incurred in such matters? In such case the Government would be bound to determine whether it would be better to yield its contentions at once or to pay the expense of both attack and defense. Clearly this charge had no part in the production of the gross income, or any part in protecting it, nor was it an incident necessarily connected therewith, but has evidently only to do with what occurs between gross income and subsequent results. To the company it is a proper charge, and the expense was proper, but it is not a proper charge against the Government as a guarantor.

In the London general charges there appears one for inspection of stores, which seems in principle a correct charge, against gross income, as it has apparently to do with a proper care for the materials through whose use the income materializes. That it is too much or too little is not the question raised before the umpire. It being in his judgment correct in principle, it is allowed.

Summarizing under this head, the umpire allows as proper working expenses all charges appearing under "No. 7 A, maintenance of ways, works, and stations;" all charges under "No. 8 B, locomotive department," except "locomotive renewals;" all charges under "No. 9 C, telegraph expenses;" all charges under "No. 10 D, traffic expenses;" all of "No. 11 E, general charges, Valencia," except "insurance, exchange, depreciation of furniture, drawing office, and agency;" all of "No. 12 F, general charges, London," except the first item of "directors," etc., "traveling expenses and law charges." That which is excepted under these general heads are held not to be proper charges against gross receipts as a part of working expense when considered in reference to determining the deficit properly chargeable in any year to the Government under this guaranty.

Neither locomotive renewals, agency fees, nor law charges in London account was in any of the charges prior to the settlement of 1890.

The Government, through its honorable Commissioner, admits a liability of £73,000 10s. 3d. and denies a liability for any sum of a greater amount.

INTEREST UPON THE UNPAID DEFICITS.

On the one hand the claimant company demands interest at 5 per cent on each annual balance, and on the other hand all interest is denied. The respondent Government insists that the nonpayment of the guaranty is the fault of the claimant company in denying and resisting the reasonable claims and objections of the respondent Government; that it has always been ready to pay the sum due when ascertained; that there has been no default on its part in fact; that it was the undetermined balance and nothing else; that the courts of Venezuela have always been open for the determination of that balance; that the claimant company as a part of the concession and guaranty had agreed that the Venezuelan courts should settle all matters of agreement before them, and therefore that the delay is the fault wholly of the claimant company and not at all that of the respondent Government, and that therefore interest, as damages, is not to be charged against it; that there is no claim that there was or is any agreement to pay interest.

There is no inconsiderable force to this argument of the honorable Commissioner for Venezuela. The umpire finds that there were just objections to the account as presented and to the claims as made, and he is well satisfied that no interest should be allowed in a punitive sense.

But by the laws of Venezuela interest on overdue accounts may be allowed at 3 per cent when there is no agreement concerning interest in the contract. If interest is to be allowed here, it is on the ground that the claimant company has been without the use of certain sums of money of which use the respondent Government has had a corresponding benefit. Equity would require compensation for such use in

order to secure a fair and perfect balance between the two parties. When the claimant company secured the concession and the guaranty it undoubtedly knew the lawful rate of interest in Venezuela when no rate was prescribed in the contract. If it were then unwilling to content itself with such lawful rate in case of default or delay of payment, it should have secured a stipulation for a more favorable rate. That it did not do this must be taken as sufficient proof that it rested content upon the lawful rate. Again, the respondent Goverment knew its lawful rate of interest at the time of entering upon such contract of guaranty, and in therein providing that all questions in dispute should be determined by its courts, where only the lawful rate could be considered and adjudged, it in effect secured a stipulation that both of the contracting parties were to abide by the lawful rate. Always since 1896 the attitude of the respondent Government toward these accounts has been as now. During all this time there has been opportunity to the claimant company to have recourse to the courts for a settlement of the questions in dispute. Denial of justice through these courts can not be assumed. That the company preferred instead to obtain its alleged rights through diplomacy and agreement is clearly its privilege; but its action has an important bearing upon the rate of interest to be allowed when more than the law rate is asked. To the reasons which have governed the umpire in his previous decisions upon the rate of interest where there was no agreement that the courts of Venezuela should settle the matters in dispute, there is here added the very important effect of such an agreement upon the question of whether the lawful rate should prevail.

The umpire decides that interest at the rate of 3 per cent per annum, the lawful rate, is to be reckoned from the time when default began to the time of this award. As some time must elapse after the year has closed before the exact conditions can be transmitted to the Government, as a reasonable time must then elapse for inspection, explanation, final audit, and allowance, and as there then must be a reasonable time before, in due course of procedure, the warrant in payment can issue, the umpire fixes as the sufficient time for all this one year after the account closes before default begins.

DIVIDENDS CLAIMED BY THE GOVERNMENT.

The respondent Government claims the allowance of dividends on £160,000 up to and including December 31, 1895. Its contract with the Southwestern of Venezuela (Barquisimeto) Railway Company (Limited) making sale of said shares especially reserved such right; hence the purchasing company has no claim upon and no right to any profits which may have been earned in any way, or which may accrue to the claimant company in consequence of the payment by the Government of its guaranty covering the period named. It is inequitable that the purchasing company should be enriched over and above its fair contract in that regard; neither is there equity in permitting the remaining £300,000 of share capital to have all of the profits belonging to the entire share capital to the loss of the respondent Government who by paying its guaranty carries into the company's treasury the profits to be divided. As stated by the learned agent for Great Britain, although it is not a universal method it seems a better one where dividends are

to be paid that they be paid to those who are registered as shareholders at the time when dividends are declared.

The reasons for this are such as are stated by the learned agent, and they are controlling in the mind of the umpire; yet there is something very incongruous and manifestly unfair in requiring Venezuela to make good an annual net income based upon the entire capital when £160,000 of this is the property of that Government; to compel it to reckon its liability to indemnify its own property and still have no interest in the proceeds. The anomaly, the incongruity, and the inequity of this has grown upon the umpire to such an extent and effect that he is impelled through his sense of right and justice to make a more equitable, seemly, and honorable arrangement. He regards it the contractual duty of the respondent Government to make good its obligations to the company to the extent even of paying the entire sum of £41,000. But when the amount necessary to do this in any year is determined, and when all proper sums having been charged off by the directors there appears a clear net profit out of which dividends may be declared, then let it be determined what per cent may be so divided, and ascertain the share of the Government therein upon this £160,000. The sum thus obtained shall be deducted from the amount which otherwise the respondent Government would pay under its guaranty and the remainder shall be the amount due on such guaranty in that year. This will save to Venezuela her equity. It will not harm the Southwestern of Venezuela (Barquisimeto) Railway Company, as it took the shares subject to the right of the respondent Government in the profits of those years; it will do no harm to the claimant company, for it has only to charge off as satisfied the sums which would otherwise be placed to the credit of those shares and make its dividends upon the remaining shares in the same manner and to the same effect as it proceeded to do with the earnings of the company in its action of 1891, where, in accordance with the terms of the settlement of May 26 of that year, the Government waived as a part of the consideration for the concession all interest in and right to the dividends which might be declared out of the net revenues of the company up to and including December 31, 1890. The remaining capital gets all of its interest in the profits of those years, while as concerning Venezuela, serious wrong, injustice, and inequity is prevented. To illustrate, take the conditions of 1892. To obtain the true net revenue for this purpose, as estimated by the umpire, deduct from the amount charged in the claimant company's account for working expenses for that year as follows:

	£.	s.	d.
Locomotive renewals	500	0	0
Paid for insurance	149	15	4
Depreciation of furniture	100	7	10
London expenses, in part	1,873	0	0
Total deduction	3,213	19	2
The working expenses, as stated in the account for that year, are	36,602	2	0
Reduce this by said	3,213	19	2
And working expenses are held at	33,388	2	10
The gross receipts named in the account were	40,473	4	4
Subtract therefrom these working expenses	33,388	2	10

	£	s.	d.
And there is obtained the sum of	7,085	1	6
To this is to be added the sum of found on the credit side of No. 5 net revenue account for 1892.	116	1	8
The result is the total net revenue, viz	7,201	3	2
On the debtor side of the said No. 5 net revenue account there is charged interest on debenture bonds	23,800	0	0
Income tax	467	0	0
In all which is the sum to be paid out of the net revenue when enriched by the Government's guaranty.	24,267	0	0

As soon as the umpire has taken from working expenses, as stated in the company's accounts, the sum of £3,213 19s. 2d., and that sum, less £500 for locomotive renewals, viz, £2,713 19s. 2d., must be added to expenditure of net revenue, as stated in said accounts, viz, £24,267, and there is then a total charge upon that account of £26,985 19s. 2d. The guaranteed net earning is £41,000. Subtracting therefrom the entire expenditures on account of net revenue, viz, £26,985 19s., 2d. and there is obtained the sum of £14,014, which sum is net profits and available for dividends.

This is a little more than 3 per cent on £460,000, the entire share capital; stated more exactly, it is .03046 plus. This per cent calculated upon £160,000, Venezuela's interest in the share capital, and the result thus obtained is the equity of Venezuela in these net profits, namely, £4,873 12s. Toward the net revenue the company contributes the difference between its working expense and its gross receipts, which, as determined by the umpire, is £7,084 1s. 6d. To this may be added £116 1s. 8d., which is found on the credit side of No. 5, as above stated, and there is then had £7,200 3s. 2d. as the sum total of net revenue produced by the company, which, taken from the guaranteed revenue of £41,000, gives the sum for which Venezuela is responsible, viz, £33,799 16s. 10d. From this may be deducted the sum found to be Venezuela's interest in the net profits for that year, viz, £4,873 12s., and in this final remainder of £28,926 4s. 10d. there is expressed the sum for which the respondent Government was liable in 1892. To this sum add interest from December 31, 1893, to the date of the award.

(NOTE.—The £500 for locomotive renewals deducted by the umpire is not added to net revenue expenditure as are the other deductions because (*a*) unlike them it was not at this particular time an expense, but a part of a fund reserved; (*b*) when it was in fact expended it was not to renew or even to replace existing locomotives, but to purchase an additional one; (*c*) it may be properly charged to capital even if expended in renewals in fact during the five years for which the Government remained a shareholder, as the life of an ordinary locomotive is rated above eight years, and no locomotive was in use on this railway until the spring of 1892, and the interest of the respondent Government as a shareholder is reckoned only to December 31, 1895; (*d*) from all of the facts it seemed inequitable to be added to net revenue expense in order to obtain the respondent Government's interest in the revenue remaining.)

Aside from the years 1891–1895 the several amounts due from the respondent Government on account of its guaranty are ascertained in substantially the same manner as in 1892, as above set forth.

Those in 1891 and 1892 will now be specifically set forth, beginning with the year 1891.

From the working expense as stated by the claimant company in its abstracts of expenditures in revenue account, pages 14, 15, 16, and 17, there are to be deducted the following:

	£	s.	d.
Locomotive renewals	500	0	0
Insurance	149	15	0
Exchange	140	18	9
Depreciation of furniture	87	19	4
Drawing office	42	0	7
London expenses, in part	1,943	10	0
Deducting this sum of	2,864	3	8
from the entire working expenses as stated by the company, viz	32,359	4	3
and there is found the sum of	29,395	0	7
which is the true working expense of that year as settled by the umpire.			
Deducting this sum from the gross receipts which are	64,267	13	3
and the net earnings are established at	34,872	12	8
The credit side of net revenue contains the items of transfer fees and interest amounting to	55	1	3
which, added, make the total net revenue, viz	34,927	13	11
This sum taken from the guaranty of	41,000	0	0
gives as a difference the sum of	6,072	6	1

The debtor side of "No. 5, net revenue account," year of December 31, 1891, has the following:

	£	s.	d.
Debenture interest	23,800	0	0
Income tax	456	11	0
Traveling expenses	180	0	0

To this must be added the amount taken by the umpire from working expenses, less £500.

	£	s.	d.
Locomotive renewals, viz	2,364	3	8
and there is found	26,800	14	8
which is the sum to be paid out from net revenue before net profits can be considered. This sum deducted from the guaranteed net revenue of	41,000	0	0
leaves the net profits available for dividends, viz	14,199	5	4
The per cent per pounds is obtained and applied as in 1892, with a result that	4,938	14	0
is to be deducted in behalf of Venezuela from the difference as obtained, viz: from	6,072	6	1
and it is found that	1,133	12	1
is the sum guaranteed for that year by the Government of Venezuela to the claimant company, it being the actual deficit after allowing Venezuela its fair equity in the net profits of that year. As the year 1893 will show a surplus of earnings over expenditures, interest will be allowed on the sum just obtained from December 31, 1892, to December 31, 1893, at 3 per cent per annum, which is, substantially	34	3	0
Making a sum total December 31, 1893, of	1,167	15	1

The year 1893 was peculiar in that there was no deficit. For this year there must be deducted from the account as stated by the company—

	£	s.	d.
Locomotive renewals	500	0	0
Insurance	166	8	4
Exchange	249	18	9
Depreciation of furniture	91	16	2
London expenses, in part	1,703	0	0
Making a sum of	2,711	3	3
which, taken from the gross expenses as stated, viz	41,390	4	9
leaves the sum of	38,679	1	6
as the gross expense allowed by the umpire for that year. Reduce the gross receipts for that year, namely	82,488	17	2
by this sum and there is found the net earnings, namely	43,809	15	8
There is to add to these net earnings the transfer fee found on page 12 of accounts, viz	2	5	0
and there is the total net revenue for the year of	43,812	0	8

There was retained for use a part of the net revenue because the guaranty had not been paid and there was nothing set aside for renewals; hence, in this calculation, to arrive at the equity of Venezuela, no deduction need be made, but the whole of the net profits may be used in determining and settling the accounts of Venezuela with the claimant company. The net profits are determined by deducting from the net revenue which is, as last above written, £43,812 0s. 8d., the sum set aside on the debit side of "No. 5, net revenue account for the year ending December 31, 1893," namely, debenture interest, £23,800, income tax, £311 13s. 1d., and the amount taken from gross expenses by the umpire, less locomotive renewals, being £2,211 3s. 3d., making the sum of £26,322 16s. 4d., which leaves as net profits the sum of £17,489 4s. 4d.; in which Venezuela has an equity to the amount of £6,080.

The deficit of 1891, with interest for one year added, as found by the umpire was £1,167 15s. 1d.; to this add the deficit of 1892, £28,926 4s. 10d., and there is a combined sum of £30,093 16s. 11d. From which deficit take the ascertained equity of Venezuela above stated, viz, £6,080, and there is the sum of £24,013 16s. 11d., on which interest at 3 per cent is to be cast from December 31, 1893, to the date of the award.

The guaranty for 1894 liquidates at £11,594 4s. 5d. Interest from December 31, 1895, at 3 per cent, to day of award.

(NOTE.—The reserve for doubtful debts mentioned on the debit side of No. 5, net revenue account, is added in making up the debts to ascertain net profits.)

The guaranty for 1896 liquidates as £4,051 12s. 6d. Interest at 3 per cent per annum from December 31, 1896, to date of award.

(NOTE.—Income tax return is added to transfer fees and interest on the credit side of No. 5, net revenue account, of this year. Balance of the cost of engine No 10, £1,618 13s. 1d., is not added to the debit side. It should be placed to capital expenditures, as against the Government guaranty.)

After 1895 the equity of Venezuela in the net profits ceased and thence forward it is only important to carefully scan and correct if need be, the charges made to working expense.

It appears from the report of the directors in the year 1895 that—

Considerable improvements were effected in improving the waterways and preparations were made to move a portion of the line at Mater Piedra from its present proximity to the river to a position less likely to suffer from floods in the future.

In the report of the directors for 1896 it is said that "the improvements at Mater Piedra, referred to in the report for 1895, have been completed and others are in progress," but examination of the financial statements of both years shows in neither any charge to capital expenditure or to net revenue accounts, and there is no reference to improvements as such under the head of "maintenance of way, works, and stations." Although in fact these expenditures are probably included under that head in each of these years the umpire can only say that if they had been shown to him as so appearing in working expense he would have transferred them in 1895 to capital expenditure as against Venezuela that thereby her equity in the profits might have been protected, and in 1896 to net revenue account as against Venezuela that her guaranty might have been thereby equitably protected.

If their policy be to hold their capital to a fixed sum and to improve gradually and make better the railroad in its way and equipment out of the net earnings of the plant as against its shareholders it is of no particular importance whether these charges are placed against gross assets or net revenue. Against the guarantor, however, it is of importance; and in the opinion of the umpire such improvements can not be made a tax upon the revenue obtained through the guaranty. The peculiar inequity of any such charge is apparent when, as in this case, there is a guaranty upon a sum which they estimated to be the cost of equipment and construction, but which is in fact an overestimate to the amount of £34,818 1s. 5d., as appears by report of December 31, 1883, and there was unused of this, as appears from the report of December 31, 1902, £21,100 16s. 5d. In the agreement of May, 1901, the claimant company reduced the per cent of the guaranty from 7 to 5, but as one of the conditions and considerations of such deduction it held Venezuela to the letter of the guaranty as to amount. It behooves the company to be careful to respond to the spirit of the original agreement in dealing with betterments and improvements.

Cook, in his work on Corporations, fifth edition, pages 1166, 1167, 1168, 1169, 1170, and notes, as cited by the umpire, is full authority for each and every position taken by him in reference to these accounts. Depreciations, renewals, and reserves as such should never be made a part of the working expenses. All betterments and improvements must be charged upon capital or net revenue, and upon the one or the other as the peculiar conditions of each may require. That any of these should be charged to working expenses is not even discussed. The working principle there suggested is that nothing be charged to capital unless the productivity or earning capacity is by such expenditure increased. Following this principle, Cook places additional equipment a proper charge to capital. Let it always be understood that the umpire does not presume to instruct the claimant company in its method of bookkeeping or in its management of its business. He only is to determine how far those methods are right and just as affecting the guaranties of the respondent Government and its equity as a shareholder in the divisible profits of the company when such guaranty is made good.

In 1896, making from working expenses as charged in the accounts of that year the same character of deductions as made in 1895, in all £3,220 7s., from the working expenses as charged, which were £30,675 19s. 1d., and there is found the true working expense of £27,455 12s. 1d. These gross working expenses deducted from gross

receipts, viz, £60,472 18s. 6d., and the net earnings of the year of 1896 are established at £33,017 5s. 5d. This sum deducted from the guaranteed amount, viz, £41,000, shows the sum due from the Government on account of its guaranty to be £7,982 13s. 7d., upon which interest is to be reckoned at 5 per cent per annum from December 31, 1897, to the date of the award.

Proceeding in the same manner as to the accounts of 1897 and the amount due under the guaranty for that year is found to be £17,411 13s. 2d., to which is to be added interest from December 31, 1898, at 3 per cent per annum to the date of the award.

In 1899 the amount due under the guaranty is made less than it would otherwise be by the additional deduction of the amount charged in the account for injuries received at the hands of the revolutionists, which the umpire has disallowed and which therefore must be taken out of the amount. The final result is that £26,896 11s. 4d. is the amount due on the guaranty for that year and interest is to be reckoned at 3 per cent per annum from December 31, 1899, to the date of the award.

The guaranty for 1899 liquidates at £19,245 18s. 10d., and interest is to be reckoned at 3 per cent per annum from December 31, 1900.

The guaranty for 1900 liquidates at £26,769 7s. 4d., to which interest is to be added at 3 per cent per annum from December 31, 1901, to the date of the award.

For 1901 the amount under the guaranty is £32,828 13s. 4d., and interest is to be added at 3 per cent per annum from December 31, 1902, to the date of the award.

For 1902 the sum is £36,967 9s. 6d., and interest is to be added at 3 per cent per annum from December 31, 1903, to the date of the award.

The aggregate sum found to be due from the Government of Venezuela to the Government of Great Britain on account of and for the benefit of the claimant company on account of its guaranty is in the aggregate, as to principal sum, £207,772 11d., and is in the aggregate as to interest £24,022 7s., making the total sum due from the respondent Government to the date of the award £231,794 7s. 11d.

The umpire does not add to this the sum called for on freight account, because if it were to be treated as paid by this award it must be added to the gross earnings of the year 1902, and in that event the guaranteed sum would be made less by just so much as the amount of the freight so added to the gross earnings. If the umpire is not in error, all of the sums for which the respondent Government stands as guarantor it could require the company to earn if it had a sufficient amount of business of its own to equal what otherwise would be the deficit in the gross earnings of the company for any year. Hence it matters not, excepting as there would be in such case increased working expense, and therefore a larger sum to be earned in gross to produce a net of sufficient sum, whether the Government pays for freight and passengers or pays it out as guaranty, only when, as in this case, the working expenses are already charged, and hence are not to be increased, whether the Government pays in terms for traffic or solely upon guaranty.

The award will therefore be made for the sum of £231,794 7s. 11d.

SUMMARY OF CLAIMS.

Number.	Name of claimant.	Amount claimed.	Amount disallowed.	Amount allowed.	Remarks.
		Bolivars.	*Bolivars.*	*Bolivars.*	
1	English Postal Administration.	36,166.39	.....	36,166.39	
2	Compañía Ferrocarril de Caracas á La Guaira.	245,556.25	.....	245,556.25	
3	Corporación del Puerto de La Guaira.	198,919.50	.....	198,919.50	
4	Hanschell & Co	429.25	.....	429.25	
5	Schoener & Co	2,121.00	.....	2,121.00	
6	Consul Charles de Lemos	7,575.00	2,020.00	5,555.00	
7	Stephen Abbott	2,525.00	1,010.00	1,515.00	Award by umpire.
8	James Crossman	2,525.00	858.50	1,666.50	
9	Compañía Ferrocarril Pto. Cabello á Valencia.	8,029,070.75	2,176,262.25	5,852,808.50	
10	Compagnie Générale des Asphaltes de France.	6,060.00	656.50	5,403.50	
11	Minas de Aroa—Compañía Anónima.	1,641.25	126.25	1,515.00	
12	Compañía Ferrocarril Bolivar	.....	.....	.....	Withdrawn.
13	Joseph Nathaniel John	8,837.50	4,545.00	4,292.50	
14	Compañía de Aplicación—Telefónicas y Eléctricas.	101,000.00	27,775.00	73,225.00	
15	Santa Clara Estates Compañía Anónima.	51,535.25	17,119.50	34,415.75	Award by umpire.
16	Thorborn Hermanos	23,987.50	.....	23,987.50	
17	D. Mc. Gillioray & Willson	1,010.00	252.50	757.50	
18	John Philip Dil Mahomet	4,040.00	1,767.50	2,272.50	
19	Deuda Diplomática	2,581,459.00	1,412,914.25	1,168,544.75	Do.
20	A. B. Heude	10,100.00	.....	.....	Do.
21	William S. Selwyn	113,625.00	30,300.00	83,325.00	
22	Owners of steamer Topaze	11,690.75	.....	11,690.75	
23	E. E. Trompet	2,525.00	505.00	2,020.00	
24	Postal Administration of Trinadad.	11,021.09	.....	11,021.09	
25	Rosa Daly	1,767.50	883.75	883.75	
26	William A. Guy	8,585.00	.....	.....	Do.
27	James Nathan Kelly	12,265.18	4,765.93	7,499.25	Do.
28	Heirs of Christian Philip	2,525.00	.....	2,525.00	Do.
29	John Davis & Son	3,931.42	.....	.....	Do.
30	Compañía Ferrocarril Bolivar (supplementary).	.....	.....	.....	Withdrawn.
31	Edwin Cox	75.75	.....	75.75	
32	Cyril A. S. Edwards	1,515.00	252.50	1,262.50	
33	Wellington Feuilletan	2,474.50	1,624.84	849.66	Award by umpire.
34	Obediah Betty	479.75	25.25	454.50	
35	Aroa Mines (supplementary)	6,312.50	.....	.....	Do.
36	Rufus Benjamin	883.75	126.25	757.50	
37	J. L. Jones	.....	.....	.....	
38	Y. O. Martindale	883.75	126.25	757.50	
39	Elenezer Davey	25,250.00	.....	25,250.00	Do.
40	Thomas Donner	17,675.00	5,050.00	12,625.00	
41	Addool Currim	7,575.00	.....	.....	
42	E. Charles Sween	1,262.50	.....	1,262.50	
43	Thomas Craig	176.75	.....	176.75	
44	Edward Mathison	126,250.00	.....	.....	Do.
45	J. C. Fitt	32,320.00	14,720.75	17,599.25	
46	James Lionné	12,625.00	3,156.25	9,468.75	
47	George Lanz	2,525.00	1,010.00	1,515.00	
48	Amos Aberdeen	4,873.25	.....	.....	
49	Fortunato Amos	20,200.00	.....	.....	Do.
50	Pedro Hara Begarec	9,090.00	7,575.00	1,515.00	
51	Bolivar Railroad Co	1,857,778.00	628,574.34	1,229,203.66	Do.
52	William Cobham	18,180.00	15,655.00	2,525.00	
53	Charles Cornwall	5,050.00	.....	.....	Do.
54	Stephen Crick	3,156.25	126.25	3,030.00	
55	William Dorre	1,439.25	176.75	1,262.50	
56	William Fitz Griffith	6,312.50	.....	.....	Do.
57	William A. Guy (supplementary).	12,246.25	.....	.....	
58	Torrec Haggis	1,792.75	277.75	1,515.00	
59	Joseph Haalam	17,675.00	5,050.00	12,625.00	
60	William A Jacob	631.25	.....	.....	
61	J. J. Lawrence	2,297.75	782.75	1,515 00	
62	Robert Louis	1,414.00	1,161.50	252.50	
63	William N. Meston	4,797 50	.....	.....	Do.
64	L. L. Michenauc	10,857.50	.....	.....	Do.
65	Ramón Padre	2,777.50	1.010.00	1,767.50	
66	A. A. Pearce	2,783.81	2,499.25	284.06	Do.

Summary of claims—Continued.

Number.	Name of claimant.	Amount claimed.	Amount disallowed.	Amount allowed.	Remarks.
		Bolivars.	*Bolivars.*	*Bolivars.*	
67	Thomas Rouse	138,269.00	113,019.00	25,250.00	Award by umpire.
68	Sta. Clara Estates (supplementary).	151,500.00	139,077.00	12,423.00	
69	J. P. K. Stevenson	685,992.00	460,130.75	225,861.25	
70	Charles Sutherland	454.50	202.00	252.50	
71	John Toby	8,131.00			
72	Benjamin Walthe	4,671.25	530.25	4,141.00	
73	J. F. White	37,875.00	25,250.00	12,625.00	
74	Charles William	6,943.75	631.25	6,312.50	
75	James William	9,595.00	1,515.00	8,080.00	
76	Jonathan William	1,010.00	353.50	656.50	
	Total	14,743,572.89	5,111,451.36	9,401,267.86	

FRENCH-VENEZUELAN MIXED CLAIMS COMMISSION.[a]

PROTOCOL, FEBRUARY 27, 1903.

[Washington protocol.]

Les soussignés J.-J. Jusserand, ambassadeur de la République française à Washington, et Herbert W. Bowen, plénipotentiaire de la République du Vénézuéla, dûment autorisés par leurs gouvernements respectifs, sont tombés d'accord sur les termes du protocole ci-après et y ont apposé leur signature:

The undersigned, Herbert W. Bowen, Plenipotentiary of the Republic of Venezuela, and J. J. Jusserand, Ambassador of the French Republic at Washington, duly authorized by their respective Governments, have agreed upon and signed the following protocol:

ARTICLE I.

Toutes les réclamations françaises contre la République du Vénézuéla qui n'ont pas été réglées par arrangement diplomatique ou par arbitrage entre les deux Gouvernements seront présentées par le ministère français des affaires étrangères ou par la légation de France à Caracas à une commission mixte siégeant à Caracas qui examinera et réglera ces réclamations et qui se composera de deux membres, l'un nommé par le président de la République française et l'autre par le Président du Vénézuéla.

Il est convenu que la désignation d'un surarbitre sera demandée à S. M. la Reine des Pays-Bas.

Si l'un des deux commissaires ou le surarbitre venait à se trouver empêché de remplir ses fonctions ou les résignait, son successeur serait désigné immédiatement et de la même manière qu'il avait été nommé lui-même. Les dits commissaires et le surarbitre devront être nommés avant le 1er mai 1903.

Les commissaires et le surarbitre se réuniront dans la ville de Caracas, le 1er juin 1903. Le surarbitre présidera leurs délibérations et

ARTICLE I.

All French claims against the Republic of Venezuela, which have not been settled by diplomatic agreement or by arbitration between the two Governments, shall be presented by the French foreign office or by the French legation at Caracas, to a mixed commission, which shall sit at Caracas, and which shall have power to examine and decide the said claims. The Commission to consist of two members, one of whom is to be appointed by the President of Venezuela and the other by the President of the French Republic.

It is agreed that Her Majesty the Queen of the Netherlands will be asked to appoint an umpire.

If either of said commissioners or the umpire shall fail or cease to act, his successor shall be appointed forthwith in the same manner as his predecessor was. Said commissioners and umpire are to be appointed before the first day of May, 1903. The commissioners and the umpire shall meet in the City of Caracas on the first day of June, 1903. The umpire shall preside over their deliberations and shall be competent to decide

[a] No rules of procedure were formulated by this Commission.

aura compétence pour trancher toute question sur laquelle les commissaires se trouveront en désaccord. Avant d'entrer en fonctions les commissaires et le surarbitre prêteront solennellement serment d'examiner avec soin et de régler avec impartialité suivant la justice et les stipulations de la présente convention toutes les réclamations qui leur seront soumises et la prestation de ces serments sera consignée dans les procès-verbaux de leurs travaux. Les commissaires, ou dans le cas où ils se trouveraient en désaccord, le surarbitre, trancheront toutes les réclamations sur la base de l'équité absolue, sans égard pour les objections d'une nature technique, ni pour les dispositions de la législation locale.

any question on which the commissioners disagree. Before assuming the functions of their office, the commissioners and the umpire shall take solemn oath carefully to examine and impartially decide, according to justice and the provisions of this convention, all claims submitted to them, and such oaths shall be entered on the record of their proceedings. The Commissioners, or in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity without regard to objections of a technical nature, or of the provisions of local legislation.

Les décisions des commissaires et, dans le cas où ils n'arriveraient pas à une entente, celles du surarbitre, seront définitives et irrévocables. Elles seront formulées par écrit. Toutes les attributions d'indemnités seront payables en monnaie d'or de France ou son équivalent en argent.

The decisions of the Commissioners, and, in the event of their disagreement, those of the umpire, shall be final and conclusive. They shall be in writing. All awards shall be made payable in French gold or its equivalent in silver.

ARTICLE II.

Les commissaires ou le surarbitre, selon les cas, examineront et régleront les dites réclamations exclusivement d'après les preuves ou renseignements fournis par les Gouvernements respectifs ou en leur nom. Ils seront tenus de recevoir et d'examiner tous documents ou déclarations écrits qui leur seront présentés par les Gouvernements respectifs ou en leur nom, à l'appui de, ou en réponse à, toute réclamation et d'entendre toute démonstration orale ou de lire toute démonstration écrite faite par l'agent de chaque Gouvernement pour chaque réclamation. Au cas où ils ne s'entendraient pas sur telle ou telle réclamation, le surarbitre décidera.

ARTICLE II.

The commissioners, or the umpire, as the case may be, shall investigate and decide said claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of or in answer to any claim, and to hear oral or read written arguments made by the agent of each Government on every claim. In case of their failure to agree in opinion upon any individual claim, the umpire shall decide.

Chaque réclamation sera officiellement présentée aux commissaires dans un délai de trente jours à partir du jour de leur première réunion, à moins que les commissaires ou le surarbitre n'étendent, pour quelqu'une d'elles, le délai de présentation de la réclamation. Ce nouveau délai ne pourra dépasser trois mois. Les commissaires seront tenus d'examiner et de régler chaque réclamation dans un délai de six mois à partir du jour de sa première présentation officielle et, au cas où ils ne seraient pas d'accord, le surarbitre examinera et tranchera dans un délai égal, à partir de la date du désaccord.

Every claim shall be formally presented to the commissioners within thirty days from the day of their first meeting, unless the Commissioners, or the umpire, in any case extend the period for presenting the claim, not exceeding three months longer. The commissioners shall be bound to examine and decide upon every claim within six months from the day of its first formal presentation, and, in case of their disagreement, the umpire shall examine and decide within a corresponding period from the date of such disagreement.

ARTICLE III.

Les commissaires et le surarbitre tiendront des procès-verbaux exacts de leurs travaux. A cet effet, les commissaires désigneront chacun un secrétaire versé dans la langue des deux pays et chargé de les assister dans les travaux de la commission. Les règles ci-indiquées mises à part, toutes les questions de procédure seront laissées à la décision de la commission ou, en cas de désaccord, à celle du surarbitre.

ARTICLE III.

The commissioners and the umpire shall keep an accurate record of their proceedings. For that purpose, each commissioner shall appoint a secretary versed in the language of both countries to assist them in the transaction of the business of the Commission. Except as herein stipulated, all questions of procedure shall be left to the determination of the Commission, or in case of their disagreement, to the umpire.

ARTICLE IV.

Les commissaires et le surarbitre recevront, pour leurs services et dépenses, une compensation raisonnable qui sera, de même que les autres dépenses dudit arbitrage, payable par moitié par les parties contractantes.

ARTICLE IV.

Reasonable compensation to the commissioners and to the umpire for their services and expenses, and the other expenses of said arbitration, are to be paid in equal moieties by the contracting parties.

ARTICLE V.

A fin de pouvoir payer le montant total des réclamations qui doivent être réglées comme il est dit plus haut et celui des autres réclamations de citoyens ou sujets d'autres nations, le Gouvernement

ARTICLE V.

In order to pay the total amount of the claims to be adjudicated as aforesaid, and other claims of citizens or subjects of other nations, the Government of Venezuela shall set apart for this purpose, and

du Vénézuéla, à partir du 1er mars 1903, mettra de côté, à cet effet, par versements mensuels, et n'affectera à aucun autre objet, 30 % sur les revenus des douanes de La Guaira et Puerto Cabello, et les sommes ainsi mises à part seront partagées et distribuées conformément à la décision du tribunal de la Haye.

Au cas ou l'arrangement ci-dessus viendrait à n'être pas exécuté, des fonctionnaires belges seront chargés des douanes des deux ports et les administreront jusqu'à ce que le gouvernement vénézuélien ait rempli les engagements résultant pour lui des réclamations susdites.

Le renvoi au tribunal de la Haye de la question susindiquée fera l'objet d'un protocole séparé.

ARTICLE VI.

Toutes les attributions d'indemnité déjà réglées en faveur de la France et non encore entièrement payées seront promptement soldées, conformément aux termes de chaque décision.

Fait à Washington, en double exemplaire, en langue française et en langue anglaise, le 27 février 1903.

JUSSERAND. [SEAL]
HERBERT W. BOWEN. [SEAL]

alienate to no other purpose, beginning with the month of March, 1903, thirty per cent. in monthly payments of the customs-revenues of La Guaira and Puerto Cabello, and the payments thus set aside shall be divided and distributed in conformity with the decision of the Hague Tribunal.

In case of the failure to carry out the above agreement, Belgian officials shall be placed in charge of the customs of the two ports and shall administer them until the liabilities of the Venezuelan Government in respect of the above claims shall have been discharged.

The reference of the question above stated to the Hague Tribunal will be the subject of a separate protocol.

ARTICLE VI.

All existing and unsatisfied awards in favor of France shall be promptly paid according to the terms of the respective awards.

Done in duplicate in the French and English texts at Washington, February 27, 1903.

PERSONNEL OF FRENCH-VENEZUELAN COMMISSION.

Umpire.—J. Ph. F. Filtz.
French Commissioner.—Peretti de la Rocca.
Venezuelan Commissioner.—José de Jesús Paúl.
French Secretary.—Charles Piton.
Venezuelan Secretary.—J. Padrón Ustáriz.

OPINION IN FRENCH-VENEZUELAN COMMISSION.

[Washington protocol.]

ACQUATELLA, BIANCHI, ET AL., CASE.[a]

In this case it was held by the Venezuelan Commissioner that a government can not be held liable to respond in damages for injuries to person or property caused by the acts of revolutionists. The umpire of the Commission, however, decided that Venezuela should make compensation for damages or injuries caused by such revolutionists.

PAÚL, *Commissioner* (claims referred to umpire):

The papers which have been presented as proofs of the facts on which the above-mentioned claims are based consist of receipts dated at Ciudad Bolívar, and signed by different revolutionary leaders, among whom are Gens. R. C. Farreras, Nicolás Rolando, and A. Villegas, and by the treasurer-general of the revolution during the period elapsing after the withdrawal of the State of Bolívar from its allegiance to the constitutional government in consequence of the uprising at the capital of said State, on the 23d of May, 1902, which was headed by General Farreras. Of these receipts only two exist, issued at Guasipati, in favor of Pietrantoni Brothers, by Gen. M. Silva Medina, on the 13th and 15th of August, 1902, for the sums of 13,000 and 2,704.60 bolivars, respectively, said General Medina being at the time governor of the Territory of Yuruary, and were for cash and merchandise taken as a loan for the maintenance of auxiliary troops of the neighboring State of Bolívar.

The signatures which acknowledge these receipts appear to be vouched for by the French consular agent at Ciudad Bolívar, and in all these certifications the consul states that the signers were at the time exercising the functions ascribed to them in the documents, in the absence of all legally constituted Venezuelan authorities, and certifying besides that the signatures which are subscribed to the papers are those customarily used by the signers, and that the sums mentioned therein have not been paid to the claimants, who could not avoid furnishing the goods and money therein mentioned.

Notwithstanding the respect which the Commissioner for Venezuela owes to the decision which has been rendered by the honorable umpire in the claim of Antoine Bonifacio, and in other cases where indemnity has been claimed for damages to property by revolutionary forces which have committed depredations in various towns of Venezuela, and principally in that of Carúpano, I consider it my duty to maintain the opinion heretofore expressed by me that claims based on negotiations, loans contracted between revolutionary chiefs and private individuals, as well as those for forced requisitions and damages sustained at the hands of revolutionary troops by neutrals, do not entail the liability of the Government of Venezuela.

In the decision given by Mr. Filtz in the claim of Bonifacio, the question principally considered was that of violence, and standing on the assumption that such existed in the case of loans, and that the

---

[a] This opinion was filed in the cases of José Acquatella for 4,488.29 bolivars Jeronimo Bianchi for 4,800 bolivars, Francisco Casale for 156 bolivars, Ineco & Abreu for 1,118 bolivars, Jean Leonardi for 50 bolivars, Pietrantoni & Co. for 8,400 bolivars, Ange Poggi for 287 bolivars, Pietrantoni Frères for 18,504.60 bolivars, Pierre Segurani for 172 bolivars, and Jos. Bianchi for the value of 152 head of cattle and 4 horses.

papers in the case need not necessarily contain proof of such violence, the umpire accepted the claim and awarded the sum called for in the receipt signed by Gen. Nicolás Rolando as chief of a revolutionary force. In the same session the umpire also decided that the abuses and pillage committed by the revolutionary troops in the course of their seizure of a place should be considered as fixing liability, as in the cases of damages occasioned by said troops, after having taken possession of a district, and that therefore these abuses and unlawful seizures imply the necessity, on the part of the Commission, of awarding indemnity to the victims of these acts.

This decision was not based on any exposition of principles invalidating the rules established by international law and by precedent decisions of other arbitral tribunals, from which has been derived the fixed doctrine of international law that governments, like individuals, are liable only for the acts of their agents, or of those who have directly assumed responsibility. These principles and precedents establish that the existence of a state of revolutionary struggle presupposes that a certain portion of the members composing the nation has temporarily withdrawn from its obedience to constituted authority, and that only when it appears that the Government has failed to make prompt and efficient use of its authority to cause a return of said dissatisfied party to obedience, and to protect, within the measure of its ability, the property and persons threatened by the revolutionary disturbance, may it be considered as liable for the consequences of such abnormal condition. Many decisions of international tribunals might be cited in support of this rule,[a] but it will be sufficient to mention its adoption by the Mexican-American Commission of 1868, by the British-American Commission of 1871, with reference to the destruction of cotton plantations by Confederate troops during the war of the rebellion; by the Spanish-American Commission of 1871, and finally by the Commission instituted by the treaty of December 10, 1898, between Spain and the United States, to settle claims of individuals of both nations arising from the last Cuban insurrection. This Commission decided that—

> Where an armed insurrection has gone beyond the control of the parent Government the general rule is that such Government is not responsible for damages caused to foreigners by the insurgents. (Spanish Treaty Claims Commission, Opinion No. 8.)

This view is sustained by an almost inexhaustible number of international law writers, among whom it suffices to mention such eminent names as those of Laurent, Pradier-Fodéré, and Despagnet, the last of whom, in his "Droit International Public" (p. 353), says:

> Mais les étrangers peuvent souffrir un préjudice à la suite d'une guerre, d'une révolution ou d'une émeute éclatant dans le pays où ils se trouvent; il est universellement admis aujourd'hui que la protection diplomatique ou consulaire ne peut être invoquée en pareil cas, parcequ'il s'agit d'un accident de force majeure dont les étrangers courent le risque absolument comme les nationaux du pays.

Referring to loans negotiated by a revolutionary faction which has control of one section of the country, but is nevertheless a government of usurpation, not recognized by foreign powers, and whose acts the legitimate government has the right to, and should disavow and annul, it is opportune to quote the opinion of an eminent French jurist, obtained by the holders of bonds on a loan of such character:

> If it be true [said Mr. Odillon Barrot] that it is, generally speaking, a wise and sound policy for a government to recognize the obligations contracted by the govern-

[a] See Sambiaggio case, p. 666 (umpire's opinion).

ment which preceded it, even while disputing its legitimacy, it would be nevertheless impossible to construe it as an absolute rule of international law. When, for example, as in the present instance, two governments are struggling for the mastery, and one of them contracts a loan with which to endeavor to insure its success, then to compel the other government on triumphing to pay the loan contracted by the other, in virtue of a strict and absolute right, would be to introduce in international law a principle sanctioned by no authority.

M. Rolin-Jaequemyns, in a bibliographic article referring to a publication on this subject by M. Becker, in the "Revue de Droit International," is still more precise:

Le pays était donc dès lors en état de guerre civile, et, cela étant, la question n'est plus de savoir si un gouvernement reprend de droit les engagements de son prédécesseur, mais si le parti qui l'emporte, dans une guerre civile, succède aux dettes que le parti vaincu a contractées pour trouver les moyens de le combattre. Il est à noter en effet que l'emprunt de Don Miguel a été contracté précisément pour combattre le parti constitutionnel. Or, à la question ainsi posée, la réponse ne nous paraît pas devoir être affirmative. Dans la guerre civile américaine les deux parties étaient belligérantes et reconnues telles; les États du Sud comme ceux du Nord ont contracté des emprunts; mais on n'a pas en général trouvé mauvais que les États du Nord répudiassent les emprunts du Sud. Ici la bonne foi publique n'est pas trompée. Car nul ne peut s'attendre à ce que le vainqueur consente à payer les frais de la guerre que lui a faite le vaincu. (Revue de Droit International, 1875, vol. 7, p. 714.)

The decisions just rendered in this capital by the umpires of the Italian-Venezuelan [a] and German-Venezuelan [b] Commissions declare with entire justice and in accordance with the principles of international law, the nonliability of the Government for injuries of persons or property of foreigners by revolutionary troops, and even the difference maintained by the latter umpire derived from his interpretation of the Washington protocol of February 13, 1903, according to which he holds that Venezuela expressly admitted, in said protocol, liability for damages arising from the civil war in progress at the time the protocol was signed, safeguards the principle which maintains that such liability is not applicable to damages caused by unsuccessful revolutionists at any other time or under any other conditions. The declaration of the Hon. Mr. Duffield is conclusive:

The Government of Venezuela is liable under her admissions in the protocol for all claims for injuries to or wrongful seizures of property by revolutionists resulting from the recent civil war.

Such admission does not extend to injuries to or wrongful seizures of property at any other times or under any other conditions. [c]

The umpire of the Italian-Venezuelan Mixed Commission maintains the nonliability under such circumstances absolutely, denying the application thereto of the clause of the Italian and Venezuelan protocol as an extension which would result in placing Venezuela in a position entirely exceptional and contrary to international law and the principles of justice on the basis of perfect equality to which she has a right by reason of her treaties with the other nations.

It is indisputable that the French-Venezuelan protocol signed at Washington, no more than those of the other pacific powers, imposes responsibilities not fixed by international law. On the contrary, a spirit of equity inspired the provisions of the said protocol, leaving to the commissioners the duty of examining and deciding all claims on a basis of absolute equity, which means that the Government of Venezuela can not be held liable according to international law, and previous decisions of arbitral tribunals, with respect to damages occa-

[a] Page 666. [b] Page 527. [c] Page 526.

sioned by rebels to the property of neutrals and affecting their interests.

In the claims under discussion there is to be considered, moreover, that they are in no relation to the acts of a military leader who had withdrawn from obedience and military discipline by an act of disloyalty while in temporary command in the State of Bolívar, out of the Federal union, it having become necessary, in order to put an end to this state of things, to engage in a contest which cost the lives of many Venezuelan citizens and might have totally destroyed all neutral property in Ciudad Bolívar and caused grave injuries to the persons of neutrals. Now, if for such destruction and injuries, international law affords no redress, it would be absurd to assume that the Government of Venezuela is compelled to reimburse the money and supplies used by the revolutionary leaders to prolong the struggle, thus contributing to the resistance which cost the Republic 1,500 of her sons.

From the foregoing reasons, and considering that it is within the power of the honorable umpire, in the event that the honorable Commissioner for France does not agree with my views, to give his definite opinion with a more careful and deliberate study of the subject-matter, I conclude by rejecting damages based on receipts signed by revolutionary leaders in Ciudad Bolívar, and accepting only those based on receipts signed by the governor of Yuruary in favor of Piedrantoni Brothers for the sum of 15,904 bolivars, with interest at 3 per cent from August 15, 1902, to August 31, 1903, making 496.32 bolivars, or in all 16,300.92 bolivars.

SUMMARY OF CLAIMS.

No.	Name of claimant.	Amount claimed.	Amount disallowed.	Amount allowed with interest.	Remarks.
		Bolivars.	*Bolivars.*	*Bolivars.*	
1	Abel el Kader ben Amed... / Meronane ben el Hadj	600.00	.....	600.00	
2	Ventura de Ayruth.....	24,309.76	18,309.76	6,000.00	
3	Antonio Aldalah	5,624.00	3,124.00	2,500.00	
4	Silvestre Battistini.....	19,400.00	13,400.00	6,000.00	
5	Luis Benedetti	35,705.70	20,705.70	15,000.00	
6	Pedro Ignacio Battestini	109,298.68	69,298.68	40,000.00	
7	A. Bonifacio.....	1,926.00	.....	1,926.00	Award by umpire.
8	Dayan y Lañado	50,000.00	35,000.00	15,000.00	
9	Dammien y Cie.....	44,000.00	44,000.00	.....	Withdrawn.
10	Alfred Dalla Costa	200,000.00	190,000.00	10,000.00	
11	Abraham F. Dourzy.....	45,076.73	44,816.73	260.00	
12	E. Duval y Ca	88,694.95	71,694.95	17,000.00	
13	Alfredo Esperon.....	120,160.00	120,160.00	.....	
14	Franceschi y Ca	21,032.11	9,761.11	11,271.00	
15	Colonia francesa del Estado Cumaná.	4,995.32	726.00	4,269.32	
16	José Dager.....	9,051.00	3,551.00	5,500.00	
17	Antonio Franceschi.....	406,969.00	328,969.00	78,000.00	
18	Jacobo y José Ganen Asoed .	12,000.00	8,000.00	4,000.00	
19	Giacomoni frères.....	59,225.00	44,225.00	15,000.00	
20	Abelardo Helo	44,000.00	40,000.00	4,000.00	
21	Antonio Javier.....	32,000.00	29,000.00	3,000.00	
22	Pedro Lafonte.....	2,000.00	1,000.00	1,000.00	
23	Leduc, Fischer St. Ives y Ca.	22,136.00	.....	23,464.00	
24	Santos Leonardi.....	48,295.20	38,295.20	10,000.00	
25	Benjamin l'Enfant.....	3,520.00	1,320.00	2,200.00	
26	Layoisse y Olive Hermanos .	600.00	.....	600.00	
27	Francisco Leonardi	95,000.00	85,000.00	10,000.00	
28	Abraham & Quiroz.....	1,603.00	.....	1,675.00	
29	Juan y Elías Badui.....	75,750.00	65,750.00	10,000.00	
30	Ernesto Croce	16,000.00	10,000.00	6,000.00	
31	H. Ligeron	29,012.94	.....	29,300.00	
32	Lucca fils & Cie.....	6,307.25	.....	6,745.00	
33	Pierre Auge Luciani.....	50,000.00	48,000.00	2,000.00	
34	Elías I. Luz.....	89,600.00	74,600.00	15,000.00	

Summary of claims—Continued.

No.	Name of claimant.	Amount claimed.	Amount disallowed.	Amount allowed with interest.	Remarks.
		Bolivars.	*Bolivars.*	*Bolivars.*	
35	Pedro Dachary	55,548.00	30,548.00	25,000.00	
36	Mambrini y Casanova	5,000.00	5,000.00		
37	Aron & Waltz	39,221.70	39,221.70		Award by umpire.
38	José Antonio Innes	6,801.75	3,601.75	3,200.00	
39	Vicentelli y Ca	376,885.98	276,885.98	100,000.00	
40	Semidey Hermanos	139,700.53	28,485.74	111,214.79	
41	Juan Savignac	15,687.00	7,487.00	8,200.00	
42	Domingo Savelli	3,857.00		3,857.00	
43	Pedro Santini	62,740.00	32,740.00	30,000.00	
44	Antonio Santelli	300.00		325.00	
45	Julian Saint Pastor	40,288.00	23,288.00	17,000.00	
46	L. Rosain (alias Emilio L. Garaine).	11,282.44	7,282.44	4,000.00	
47	J. M. Pomies	420.00		420.00	
48	Edouard Romain Peypouquet.	735.00		735.00	
49	Enrique Pedanga	17,680.00	12,680.00	5,000.00	
50	Jorge Narciso	32,134.54	24,134.54	8,000.00	
51	Albert Naquet	600.00		600.00	
52	L. Moser	700.00		700.00	
53	Emiliano Moreno	70,000.00	48,000.00	22,000.00	
54	Carlos Merlin	1,061.00		1,125.00	
55	T. Michelangeli	10,000.00		10,000.00	
56	Pascual Medori	25,000.00		25,000.00	
57	Joseph Marie Mattei	5,504.00	4,004.00	1,500.00	
58	Natalio y Antonio Melik	13,500.00	3,500.00	10,000.00	
59	Bajares	14,700.00	9,700.00	5,000.00	
60	R. Brousseflis	2,964.70	2,964.70		
61	Louis Capecchi	400.00		400.00	Do.
62	Philip Capecchi	20,669.75	13,669.75	7,000.00	
63	Toussaint Leonardi	9,806.00	7,306.00	2,500.00	
64	Lucca y Ca	5,142.96	350.00	4,792.96	
65	Vve. Roche Luchessi	3,212.00	1,412.00	1,800.00	
66	Raffalli frères	48,452.12	9,667.66	38,784.46	Do.
67	Paul Santoni	72,342.20	32,342.20	40,000.00	
68	Simón Sucre	64,000.00	49,000.00	15,000.00	
69	Marcos Angeli	214,606.00	129,606.00	85,000.00	
70	Michel Antoni	33,700.00	24,700.00	9,000.00	
71	Louis Bertoncini	96,204.00	84,204.00	12,000.00	
72	Napoleón Chistoni	60,000.00	40,000.00	20,000.00	
73	Franceschi & Ca	19,074.00	5,245.00	13,829.00	
74	Quilicus Prosperi	27,000.00	18,000.00	9,000.00	
75	Moise Roffe	329,000.00	260,778.73	68,221.27	
76	Augé Santiago	16,066.00	8,066.00	8,000.00	
77	F. Bocheciampe	25,679.92	18,679.92	7,000.00	
78	Manuel Melik	5,910.00		5,910.00	
79	José Panevel	1,434.00	634.00	800.00	
80	Henry Pedanga	39,387.00	24,160.00	15,227.00	
81	Eduardo Petit	20,000.00	19,000.00	1,000.00	
82	Sebastián Viale Rigo	1,000,000.00	1,000,000.00		Withdrawn.
83	Biord	2,400.00	1,400.00	1,000.00	
84	Vve. Catalá	80,000.00	65,000.00	15,000.00	
85	Gabriel Gracia	5,025.76		5,097.00	
86	Emilio Mirlin	3,200.00	3,200.00		Do.
87	Jn. Ma. Gonpot	6,000.00	3,800.00	2,200.00	
88	Jacob Kalfon	279,315.00	279,315.00		
89	Tonanet Marregot	12,567.00	7,567.00	5,000.00	
90	Joseph Acquatella	4,488.29		4,532.00	Award by umpire.
91	Jerome Bianchi	4,800.00	800.00	4,000.00	Do.
92	François Casale	156.00		159.00	Do.
93	Casanova frères	1,118.00		1,129.00	Do.
94	Ineco & Abreu	50.00		50.00	Do.
95	Jean Leonardi	8,400.00	3,920.00	4,480.00	Do.
96	Pietrantoni & Ca	15,528.00		15,603.00	Do
97	Pietrantoni frères	18,504.00		18,913.92	Do
98	Augé Poggi	287.00		300.00	Do.
99	Pierre Seguranie	172.00		172.00	Do.
100	Pierre Venturni	138,773.00	113,773.00	25,000.00	Do.
101	Joseph Bianchi	20,000.00	3,800.00	16,200.00	Do.
102	Elias Abraham	512.00		512.00	
103	Michel Antoni	450.00		475.00	
104	Pio y Antonio Borghi	18,005.06	10,005.06	8,000.00	
105	Chapon y Ca	10,445.00	4,445.00	6,000.00	
106	Jean Cura Dager	24,508.84	22,508.84	2,000.00	
107	Emile Torado	428.00		428.00	
108	Auge Franceschi	40,833.77	25,833.77	15,000.00	
109	François Franceschi	48,822.00	28,822.00	20,000.00	
110	François Giorgetti	595,551.99	465,551.99	130,000.00	
111	Toussaint Leonardi	1,533.00		1,533.00	
112	Edouard Lindheimer	21,969.78	10,858.00	11,111.78	

Summary of claims—Continued.

No.	Name of claimant.	Amount claimed.	Amount disallowed.	Amount allowed with interest.	Remarks.
		Bolivars.	*Bolivars.*	*Bolivars.*	
113	Pierre Menginon	2,685.75	2,685.75		
114	Jacobo Mestaje	18,160.05	8,660.05	9,500.00	
115	Pierre Marie Muziotti	117,958.00	102,958.00	15,000.00	
116	Augusto Pereney	121,133.00	102,501.00	18,632.00	
117	George Pradier	5,000.00	2,500.00	2,500.00	
118	François Santelli	13,749.12	349.12	13,400.00	
119	Jean Faux	4,159.00		4,159.00	
120	Louis Vicentelli	409,985.00	389,985.00	20,000.00	
121	Zonain Aid	1,048.00		1,048.00	
122	Jean Antonorsi	16,575.21	9,075.21	7,500.00	
123	Jacques Augé	5,880.00	3,880.00	2,000.00	
124	Elias Batri, alias Bajaré	20,020.00	9,100.00	10,920.00	
125	Benedetti Bodmio & Ca	2,073.96	573.96	1,500.00	
126	Jean François Benedetti	7,797.00		7,877.56	
127	Joseph Albert Bonnon	13,900.00	7,900.00	6,000.00	
128	Louis Angel Tomelli	30,867.25	8,862.25	22,005.00	
129	Joseph Frustruck	146,179.40	139,779.40	6,400.00	
130	Paul Desiré Hocquet	5,477.28		5,477.28	
131	Henry Ligeron	1,010.22		1,010.22	
132	Fabian Michelangeli	14,952.00		14,952.00	
133	Jules Mathieu Milliani	80,000.00	65,000.00	15,000.00	
134	Emilio Mirlin	3,200.00	700.00	2,500.00	
135	Michel Elie Monna	19,120.00	10,320.00	8,800.00	
136	Salomón Monsif	31,577.50	15,577.50	16,000.00	
137	Alphonse Jean Morales	122,000.00	104,000.00	18,000.00	
138	Victorine Baiz	9,304.00	4,304.00	5,000.00	
139	M. Vve. Clotilde Pietri	892.38		892.38	
140	Philippe Pinelli	75,000.00	65,000.00	10,000.00	
141	Antoine Ritorcelli	2,981.00	600.00	2,381.00	
142	Philippe Salas	13,000.00	12,500.00	500.00	
143	Joseph Salvatori	25,313.00	24,313.00	1,000.00	
144	León André Sawasin	6,768.04	1,253.04	5,515.00	
145	Laurent Tarbes	5,230.00	2,230.00	3,000.00	
146	Abadie y Anglade	33,927.16	8,927.16	25,000.00	
147	A. Blondiri	2,642.00	2,000.00	642.00	
148	G. Dupuy	13,488.50	5,488.50	8,000.00	
149	R. Paoli	48,800.00	9,800.00	38,200.00	
150	Mdme. Peyronnet	2,140.00	1,640.00	500.00	
151	Madame Schwinots	36,101.12	36,101.12		
152	Eugene Jamet	2,800.00	600.00	2,200.00	
153	Jonela & Ca	17,640.25	10,798.55	6,841.70	
154	François Leonardi	16,771.00	12,771.00	4,000.00	
155	François et Corsi Antoine Luchessi.	6,568.00	2,568.00	4,000.00	
156	Dominique Luciani	670,880.87	630,880.87	40,000.00	
157	François Marengo	103,388.50	100,540.50	2,848.00	
158	Santiago Marengo	10,633.00	7,550.00	3,083.00	
159	Antoine Mariani et fils	445,000.00	400,000.00	45,000.00	
160	Dominique Mariani	14,558.00	12,580.00	1,978.00	
161	Paul Auguste Marregot Jonanet.	41,022.00	32,622.00	8,400.00	
162	Alfred Massabie	4,000.00		4,120.00	
163	Tomas Masdani et fils	19,900.00		19,900.00	Award by umpire.
164	Michel Mattei	100,000.00	97,000.00	3,000.00	
165	Melik, Natallo & Cie	91,750.50	81,750.50	10,000.00	
166	Louis Noroy	8,040.00	8,040.00		
167	Firmin Orliac	1,200.00	1,200.00		
168	Palazzi (Merizo père et fils Charles et Toussaint).	329,257.54	291,859.79	37,397.75	
169	Vitali Papin				
170	Julian Peyron	9,863.20	6,863.20	3,000.00	
171	Dominique Pieri	800.00		880.00	
172	Mathieu Pietri	500,000.00	500,000.00		
173	Lucca Pietroni	14,837.50	12,337.50	2,500.00	
174	Paul Prosperi	8,490.50		8,525.00	
175	Antoine et Dominique Renucci	5,986.25	3,986.25	2,000.00	
176	Alexis Rescanieres	11,334.00		11,334.00	
177	Paul Saulny	1,603,740.00	1,583,740.00	20,000.00	
178	Abut Sesin	15,000.00	12,000.00	3,000.00	
179	Celestin Fajan	4,840.00	1,340.00	3,500.00	
180	Tarbes & Ca	21,760.00	2,040.00	19,720.00	
181	Emile Fillet	120,000.00	120,000.00		
182	Barthelemy Tomasi & Ca	371,849.76	291,849.76	80,000.00	
183	Toussaint Venturini	15,100.00	11,540.00	3,560.00	
184	Philippe Abbati	1,533.44		1,583.44	
185	Julian Abraham	80,000.00	68,000.00	12,000.00	
186	Nicolas Ackaer	7,787.50	7,787.50		
187	Jean Agostini	16,680.00	9,180.00	7,500.00	
188	Fassius Alin	600.00		600.00	
189	Antoine Apparicio				

Summary of claims—Continued.

No.	Name of claimant.	Amount claimed.	Amount disallowed.	Amount allowed with interest.	Remarks.
		Bolivars.	*Bolivars.*	*Bolivars.*	
190	Philippe Aquique	3,587.00	1,587.00	2,000.00	
191	Adolphe Astarté				
192	Battaglini Barthelemy y Anziani	208,450.00	202,014.40	6,435.60	
193	Pierre Ignace Battistini	10,791.12		10,791.12	
194	Dominique Marie Battistini	605,728.00	565,728.00	40,000.00	
195	Simón François Benedetti				
196	André Benvenutti	17,200.00	16,400.00	800.00	
197	Boggio frères et sœurs	13,488.50	5,488.50	8,000.00	
198	Joseph Bonnet	622,500.00	572,500.00	50,000.00	
199	Joseph Cagninacci	40,000.00	38,180.00	1,820.00	Award by umpire.
200	Ange Vincent Calendini	25,000.00	25,000.00		
201	Dominique Capdeville	3,882.00	1,002.00	2,880.00	
202	Virgile Casalta	4,480.00		4,480.00	
203	Simón Jean Catoni	6,715.00	5,215.00	1,500.00	
204	Abraham Celini	6,633.52	6,633.52		
205	Joseph Chersia	133,004.20	120,486.20	12,518.00	
206	Hippolite Coliguin				
207	Henry Cottin	6,922.35	6,922.35		
208	Isidoro Antoine Elies	2,600.00	680.00	1,920.00	
209	Jules François et Jean Bte. Felce.	261,138.32	185,938.32	75,200.00	
210	Joseph Fournier	292,200.00	288,600.00	3,600.00	
211	Etienne Franceschi	51,188.00	41,188.00	10,000.00	
212	Joseph Franceschi	22,780.25	15,280.25	7,500.00	
213	Franceschi y Cie	16,500.00	9,451.00	7,049.00	
214	Eugène Gigault	8,800.00	3,200.00	5,600.00	
215	Magent Grisol	100,000.00	98,000.00	2,000.00	
216	Marie Guizard	50,000.00	50,000.00		
217	Fernand Herbet	2,139,692.85	2,064,692.85	75,000.00	
218	Joseph Savery	12,969.16	8,924.16	4,045.00	
219	Jean Laurent Scotti	28,000.00	27,000.00	1,000.00	
220	Joseph Pepin				
221	Philipre Abbatti	10,035.64	5,296.04	4,739.60	
222	Juan Agostini	300,585.00	281,869.00	18,716.00	
223	Mathieu Albertucci	15,544.00	7,544.00	8,000.00	
224	Barthelemy Antonetti	6,100.00	4,100.00	2,000.00	
225	Jules Antoine	27,080.00	24,980.00	2,100.00	
226	Toussaint Antonini	5,238.00	1,838.00	3,400.00	
227	Pascal Anziani	4,670.50	2,000.00	2,670.50	
228	Antoine Apparicio				
229	Martin Benigni	1,640.00	560.00	1,080.00	
230	François Bertucci	6,524.00	2,251.00	4,273.00	
231	Jean Bertucci	38,390.00	27,450.00	10,940.00	
232	Jean Baptiste Bonetti	8,673.00	5,978.00	2,695.00	
233	François Casale	4,816.00		4,816.00	
234	Casanova frères	7,308.00		7,308.00	
235	François Cerani	9,360.00	2,560.00	6,800.00	
236	Ours Jules Ciavatti	4,396.00	2,912.00	1,484.00	
237	Compagnie des Cautchoucs de l'Orinoque.	4,360.00	760.00	3,600.00	
238	Pierre Fericelli	12,900.00	2,900.00	10,000.00	
239	Constantini Fericelli	834.00		834.00	
240	Blas Hyacinthe Figurella	7,160.00		7,160.00	
241	Jean Dominique Figurella	6,771.00		6,771.00	
242	Pierre Franchi	200.00		200.00	
243	J. Frustuck	37,160.00	32,160.00	5,000.00	
244		39,580.00	39,580.00		
245	Paul Guerini	4,500.00	1,900.00	2,600.00	
246	Antoine Liccioni	72,620.00	36,080.00	36,540.00	
247	Jule Liccioni	17,092.00	5,292.00	11,800.00	
248	Joseph Lorenzi	4,631.52	2,331.52	2,300.00	
249	Philipe Antoine Muratti	4,514.00	2,369.50	2,144.50	
250	Oliveri frères	1,980.00	665.00	1,315.00	
251	François Olmeta	10,001.00	10,001.00		
252	André Orsini	1,013.00	713.00	300.00	
253	Louis Orsini	4,400.00		4,400.00	
254	Orsini frères	720.00	400.00	320.00	
255	Petrantoni frères	15,873.00	2,800.00	13,073.00	
256	Antoinette Hercilia Pietrini	54,145.12	46,600.00	7,545.12	
257	Poggi frères	1,297.24		1,297.24	
258	Charles Rafale	53,680.00	53,680.00		
259	Ange François Rutili	1,376.04	576.04	800.00	
260	Barthelemy Tomasi y Cie	1,475.00	740.00	735.00	
261	Dominique Signanini	684.00		684.00	
	Total	17,888,512.80	15,224,584.03	2,667,079.51	

APPENDIX TO FRENCH-VENEZUELAN COMMISSION.[a]

PROTOCOL, FEBRUARY 19, 1902.

[Paris protocol.]

Los suscritos, el Señor H. Maubourguet, Plenipotenciario de los Estados Unidos de Venezuela, y el Señor Th. Delcassé, Diputado, Ministro de Negocios Extranjeros de la República Francesa, debidamente autorizados por sus respectivos Gobiernos, han convenido en lo siguiente:

ARTÍCULO I.

Al propio tiempo que nombren sus Ministros en París y Caracas, los Gobiernos Venezolano y Francés designarán cada uno un árbitro y elegirán por tercero en discordia al Excelentísimo Señor F. de Leon y Castillo, Marqués del Muni, Embajador Extraordinario y Plénipotenciario de Su Majestad el Rey de España cerca del Presidente de la República Francesa.

Los dos primeros árbitros se reunirán en Caracas inmediatamente después de la entrega por el Ministro de Francia al Presidente de los Estados Unidos de Venezuela de sus credenciales, á efecto de examinar, de concierto, las demandas de indemnizaciones presentadas por Franceses, por daños sufridos en Venezuela con motivo de los acontecimientos revolucionarios de 1892. Las demandas de indemnizaciones que no pudieren arreglarse amigablemente entre estos dos árbitros, serán sometidas por ellos al tercero en discordia.

Si no se hubiere estatuido nada definitivamente, ya por los dos árbitros, ya por el tercero, dentro del plazo de un año contado desde

Les soussignés, M. H. Maubourguet, Plénipotentiaire des États-Unis du Vénézuéla, et M. Th. Delcassé, Député, Ministre des Affaires Étrangères de la République Française, dûment autorisés par leurs Gouvernements respectifs, sont convenus de ce qui suit:

ARTICLE I.

En même temps qu'ils nommeront leurs Ministres à Paris et à Caracas, les Gouvernements Vénézuélien et Français désigneront chacun un arbitre et choisiront, pour tiers arbitre, Son Excellence M. F. de Leon y Castillo, Marquis del Muni, Ambassadeur Extraordinaire et Plénipotentiaire de Sa Majesté le Roi d'Espagne près le Président de la République Française.

Les deux premiers arbitres se réuniront à Caracas, aussitôt après la remise par le Ministre de France au Président des États-Unis du Vénézuéla de ses lettres de créance, à l'effet d'examiner, de concert, les demandes d'indemnités présentées par des Français pour des dommages subis au Vénézuéla du fait des événements insurrectionnels de 1892. Les demandes d'indemnités qui ne pourraient être réglées à l'amiable entre ces deux arbitres seront soumises par eux au tiers arbitre.

S'il n'a pas été définitivement statué, soit par les deux arbitres, soit par le tiers arbitre, dans un délai d'une année à compter de

[a] No rules of procedure were formulated by this Commission.

la llegada del árbitro francés á Caracas, el Gobierno Venezolano entregará al Gobierno Francés, para distribuirse por él entre los derecho-habientes, un millón de bolivares en deuda diplomática del 3%, mediante el cual pago quedarán definitivamente arregladas todas las reclamaciones motivadas por los sucesos revolucionarios de 1892.

ARTÍCULO II.

Las demandas de indemnizaciones extrañas á las que son objeto del artículo I, pero que estén fundadas en hechos anteriores al 23 de mayo 1899, serán examinadas, de concierto por el Ministro de Relaciones Exteriores de Venezuela y por el Ministro de Francia en Caracas. Si dentro de un plazo de seis meses, contado desde la entrega de las credenciales del Ministro de Francia en Caracas, no se pusieren de acuerdo sobre el monto de las indemnizaciones que hayan de concederse, las demandas serán sometidas por ellos al tercero en discordia, designado en el artículo precedente.

El Ministro de Relaciones Exteriores de Venezuela y el Ministro de Francia en Caracas, podrán delegar, cada uno en lo que le concierna, la ejecución de las disposiciones que preceden, en el árbitro nombrado por su Gobierno.

Si varias demandas de indemnizaciones fundadas en hechos diferentes se presentaren por el mismo reclamante y una de ellas estuviere en el caso de someterse al procedimiento establecido en el presente artículo, las demás se juntarán á ella para ser objeto de un arreglo único.

Queda entendido que este procedimiento, como el adoptado para las reclamaciones de 1892, no se instituye sino á título excepcional, y no invalida la convención del 26 de noviembre de 1885.

l'arrivée de l'arbitre français à Caracas, le Gouvernement Vénézuélien remettra au Gouvernement français, pour être réparti par ses soins entre les ayants droit, un million de bolivares en dette diplomatique 3 p. 100, moyennant quel versement toutes les réclamations du fait des événements insurrectionnels de 1892 seront définitivement réglées.

ARTICLE II.

Les demandes d'indemnités autres que celles qui sont visées à l'article 1er, mais fondées sur des faits antérieurs au 23 mai 1899, seront examinées de concert par le ministre des affaires étrangères du Venezuela et par le ministre de France à Caracas. Si dans le délai de six mois à dater de la remise des lettres de créance du ministre de France à Caracas, ils ne tombent pas d'accord sur le montant des indemnités à allouer, les demandes seront soumises par eux au tiers arbitre désigné à l'article précédent.

Le ministre des affaires étrangères du Venezuela et le ministre de France à Caracas pourront déléguer, chacun en ce qui le concerne, pour l'exécution des dispositions ci-dessus, l'arbitre nommé par leur gouvernement.

Si plusieurs demandes d'indemnités, fondées sur des faits différents, sont présentées par le même réclamant et que l'une d'entre elles soit dans le cas d'être soumise à la procédure établie au présent article, les autres y seront jointes, pour faire l'objet d'un règlement unique.

Il est entendu que cette procédure, comme celle qui est adoptée pour les réclamations de 1892, n'est instituée qu'à titre exceptionnel et n'infirme pas la convention du 26 novembre 1885.

ARTÍCULO III.

El tercero en discordia decidirá sin apelación.

Las indemnizaciones se pagarán al Gobierno Francés en títulos de la Deuda diplomática del 3 o/o, dentro de los tres meses que sigan al acuerdo ó al fallo.

ARTÍCULO IV.

El Gobierno Venezolano pedirá al Congreso que inscriba en el Presupuesto de Gastos las sumas necesarias para el pago de las mensualidades atrasadas de la Deuda diplomática, y los tenedores de títulos de esa deuda deberán, por lo demás, participar de todas las ventajas que resulten para ellos de la estricta aplicación de las leyes venezolanas orgánicas sobre la materia.

El presente Arreglo será ratificado, y las ratificaciones se canjearán en París ó en Caracas cuanto ántes se pueda y á más tardar el 30 de abril de 1902.

En fé de lo cual, los suscritos, debidamente autorizados por sus Gobiernos respectivos, han extendido el presente acto y puesto en él sus sellos.

Hecho por duplicado en Paris, el 19 de febrero de 1902.

ARTICLE III.

Le tiers arbitre décidera sans appel.

Les indemnités seront versées au Gouvernement Français, en titres de la Dette diplomatique 3 o/o dans les trois mois qui suivront l'entente ou le prononcé de la sentence.

ARTICLE IV.

Le Gouvernement Vénézuélien demandera au Congrès d'inscrire au Budget des dépenses les sommes nécessaires au payement des mensualités arriérées de la Dette diplomatique, les porteurs de titres de cette dette devront d'ailleurs bénéficier de tous les avantages qui résultent pour eux de la stricte application des lois vénézuéliennes organiques sur la matière.

Le présent Arrangement sera ratifié et les ratifications en seront échangées à Paris ou à Caracas le plus tôt que faire se pourra et au plus tard le 30 avril 1902.

En foi de quoi, les soussignés, dûment autorisés par leurs Gouvernements respectifs, ont dressé le présent acte et y ont apposé leurs cachets.

Fait à Paris, en double exemplaire, le 19 février 1902.

H. MAUBOURGUET. [L. S.]
DELCASSÉ. [L. S.]

PERSONNEL OF FRENCH-VENEZUELAN COMMISSION.

[Organized under protocol of February 19, 1902.]

Umpire.—Marqués del Muni.[a]
French Commissioner.—Peretti de la Rocca.
Venezuelan Commissioner.—José de Jesús Paúl.
French Secretary.—Charles Piton.
Venezuelan Secretary.—J. Padrón Ustáriz.

---

[a] The umpire in this Commission did not sit at Caracas; but the claims upon which the Commissioners were unable to agree were referred to him at Paris, France. Upon his resignation Judge Magnaud, of France, was appointed as his successor.

OPINIONS IN FRENCH-VENEZUELAN COMMISSION.

[Paris Protocol.]

LEDUC, ST. IVES, FISCHER & CO. CASE.[a]

Commission declared without jurisdiction because claims arose subsequent to May 23, 1899.

PAÚL, *Commissioner* (for the Commission):

This claim arose out of a debt by the Government of Venezuela in favor of Mr. Domingo R. Wetto, a tailor domiciled in Caracas, for the price of uniforms for the national army, which debt was assigned by said Mr. Wetto on September 6, 1901, to the firm of Leduc, St. Ives, Fischer & Co., as appears by a document authenticated by the parochial court of this city on the 23d of said month and year.

The orders of payments drawn by the minister of war and marine in favor of Wetto are dated August 1, September 12 and 14, and October 19, 1899.

As appears from the dates of these orders they are all subsequent to May 23, 1899, and consequently the examination of this claim does not belong to this Commission, in conformity with article II of the protocol of Paris, which determines its jurisdiction, wherefore the Venezuelan arbitrator is of opinion that the Commission should declare itself without jurisdiction to examine it. This opinion was concurred in by the French Arbitrator.

ROGÉ CASE.

Damages allowed for unlawful imprisonment.

PAÚL, *Commissioner* (for the Commission):

From the documents presented following, the facts are proven:

That Dr. J. M. Aveledo, as attorney of Alfonzo Samterre and Carlos Luciani, on the 17th of October, 1888, before the court of the first instance, of the first judicial circuit of Ciudad Bolívar, instituted a suit for libel against Ernesto Rogé, superintendent of the syndicate Alto Orinoco. The judge of the first instance received testimony requested by the complainant and that of said Mr. Rogé, and, not finding any merit from the summary proceedings to follow up the suit, issued a decree on November 5 of said year discontinuing the action and declaring that it did not injure the defendant in any manner as to his reputation.

This decision having been called to the attention of the superior judge in the ordinary manner, the latter official by a decree dated January 7, 1889, revoked the decree issued by the judge of the first instance and made an order for detention against the citizen Ernesto Rogé. Dr. F. A. Hammer and Ramón Barrios Gómez having certified that Rogé was suffering from rheumatism in the præcordial region, which prevented him from remaining in the public jail as a prisoner of that city, said superior judge made an order to the judge of the first instance that he should transfer said Rogé to the hospital for men of that city.

---

[a] Decided by other commission. See p. 490.

The judgment of the superior judge having been appealed from in turn by Rogé, the record passed to the supreme court, which in a judgment dated February 13, 1889, revoked in all its parts the judgment rendered by the superior court, and confirmed the decree issued by the court of the first instance on November 5, 1888, ordering that the proper order be issued so that the defendant, Rogé, might be placed at liberty, which order was made on the same day. E. Rogé bases his claim for indemnity upon the injury, which he asserts was committed against his person, in ordering his detention and committing him to be deprived of his liberty for the space of thirty-seven days, the superior judge of Ciudad Bolívar violating by this proceeding the definite provisions of article 271 of the code of criminal procedure.

On July 4, 1892, Ernesto Rogé addressed himself to the minister of foreign relations of France, asking that his claim be pressed against the Government of Venezuela for damages and injuries which he estimated at the sum of 200,000 bolivars.

During the detention of Rogé notes were exchanged between the representative of France in Venezuela and the minister of foreign relations of the latter country, the minister of France interposing his diplomatic action in order to procure the prompt release of Rogé and reserving in said notes all rights concerning the moral and material satisfaction that the Government of France on the one part, or Mr. Rogé on the other, might believe they were entitled to obtain from the Government of Venezuela with reference to the attempt consummated against the liberty of a French citizen.

Proof also exists in the record, which shows that the President of the Republic and the minister of foreign relations, then in authority, addressed themselves by telegraph concerning the actions of the French minister to the president of the State of Bolívar, asking the necessary information for a correct understanding of the matter, of which demand the said representative was duly advised. There exists also a telegram dated on January 16, from Mr. Saint Chaffray, minister of the French Republic, addressed to Mr. Delort at Ciudad Bolívar, which says:

> Relying upon the intentions and sentiments of equity of the Government, I do not doubt that what is necessary will be done in order to assure Mr. Rogé of the benefits of constitutional guaranties and, on this occasion, to give a new proof of its benevolent intentions toward the Alto Orinoco Company.

The superior judge of Ciudad Bolívar, in ordering the detention of E. Rogé, violated the provisions of articles 200 and 271 of the code of criminal procedure, it being expressly provided by said articles that—

> In every case of discontinuance if the act in controversy has warranted the detention of the defendant, and if said detention, has been effected, the person or persons released from responsibility shall immediately be placed at liberty, under bond, while the superior tribunals affirm or overrule the judgment as they are empowered to do by this code.

Rogé not having been properly imprisoned in accordance with the discontinuance of the judge of the first instance, because the committing magistrate did not find any reason to order his detention in conformity with article 137 of said code, the superior judge could not order the arrest of the accused, because he had not been put at liberty, but he ought to have limited himself to referring his judgment to the supreme court, and until it was rendered final by its confirmation it was the place of the committing magistrate or the judge of the first

instance to fulfill what had been definitely adjudged, and his place to decree the detention of the accused.

The arbitrator considers this violation of the law as an unjust and illegal act perpetrated by the superior judge of Ciudad Bolívar; but at the same time he can not help but appreciate the attitude of the judge of the first instance, who in a truly justified and honorable judgment gave every sort of guaranty and satisfaction. Likewise he considers the proceeding of the supreme court entirely in accord with the law, and the acts which the President of the Republic and his ministers of interior and foreign relations performed with all diligence in order to satisfy as far as possible the demand of the minister of France in favor of Rogé, showing without any doubt what the said representative expressed in his telegram copied above, *the good intentions and sentiments of equity of the Government, and that the necessary steps were being taken to assure Mr. Rogé of the benefit of the constitutional guaranties.*

The amount of indemnity which is demanded is under every aspect disproportionate, seeing, as it is demonstrated, that relief was sought to be given by the National Government for the illegal act in question with the least possible delay, and it was corrected by the judgment of the supreme court in the State of Bolívar.

The Venezuelan Commissioner considers that it would be a reasonable and equitable compensation for the damage suffered by Rogé on account of his detention in the hospital of Ciudad Bolívar for thirty-seven days to award him the sum of 10,000 bolivars.

The French Commissioner concurred in this opinion, agreeing to reduce the amount which, in his opinion, ought to have been allowed Rogé.

DECAUVILLE COMPANY CASE.

Demand that claim be paid for the amount demanded in bonds of diplomatic debt at 40 per cent of their face value refused. Held, that the Commission had no jurisdiction to change manner of payment prescribed by protocol.

PAÚL, *Commissioner* (for the Commission):

This claim for indemnity is made up of the following amounts:

	Bolivars.
Balance of the debt of the Government of Venezuela to the Decauville association, due May 15, 1889	10,923.46
Installment due September 15, 1889	25,923.47
Interest at 6 per cent, in accordance with the liquidation	9,896.55
Difference on account of the value which is contained in the claim of the bonds of the diplomatic debt, estimating them at 60 per cent	31,162.32
	77,905.80

The document presented in support of this claim consists of a contract made between Mr. Alberto Smith, minister of public works, with the authorization of the President of the Republic, and the Vicomte Gonzague de la Baume, as representative of the Decauville du Petit Bourg Company, whereby the indebtedness which said company held against the Government of Venezuela for the sale of four iron bridges was liquidated and the amount of said indebtedness was fixed at the sum of 77,770.39 bolivars, inclusive of interest to the dates of the respective expirations of the three terms agreed on in said contract for the total payment of the debt.

It appears from a communication addressed by the citizen minister of the treasury to the minister of foreign relations, dated June 5 of the present year and numbered 284, a copy of which has been transmitted to this Commission, that the account which the representative of the Decauville Company makes of the payments made by the Government of Venezuela, upon the dates therein indicated, on account of the debt, is correct, and the balance which results as being owed on account of this debt at the date of the termination of the respective obligations, amounting to 36,848.93 bolivars, is likewise correct. Notwithstanding that the liquidation of interest made in the contract between the minister of public works and the representative of the Decauville Company was made at the rate of 6 per cent annually up to the dates established for the subsequent payments of the debt, there is no proof that it was agreed to make any agreement in the future for interest upon the sums which might remain owing at the same rate, wherefore the rate established by this Commission ought to govern in this case; that is to say, that in the cases in which there is no express agreement concerning interest there will be allowed upon liquidated debts or obligations for loans of cash at the legal rate of 3 per cent, in conformity with article 1720 of our code, which is in accord with article 1907 of the French civil code. This liquidation being carried into effect from the respective dates upon the balances which have remained owing, a result of 4,530.85 bolivars is obtained.

The contention which the claimant makes that he should be allowed 40 per cent more upon the amount of the principal debt and upon the interest because of the fact that the payment was made, in conformity with the terms of the protocol, in bonds of the 3 per cent diplomatic debt instead of in cash, is entirely inadmissible, because the party claimant has spontaneously submitted his demand to this Commission, whose authority is limited to examining the claims presented by Frenchmen, founded upon facts prior to May 23, 1899, fixing the amount thereof in conformity with the proofs which relate to the facts upon which they are based, and in conformity with the grounds that may justify them.

The method of payment established by article III of the protocol is a fact entirely separated from the duty of judging concerning the justice or injustice of the demand.

This fact relates solely to the execution of the judgment which the arbitrators may pronounce, and this conclusion is clearly deduced from the terms of said article, which reads as follows:

> Awards [those which the arbitrators or the umpire may allow] shall be paid to the French Government in bonds of the 3 per cent diplomatic debt within three months after the agreement or judgment. [a]

The provision which article IV of the protocol contains is of the same character and provides:

> That the Government of Venezuela shall ask Congress to include in the provision for expenses the sums necessary for the payment of the monthly installments in arrears of the diplomatic debt, and the holders of bonds of that debt shall, besides, participate in all the advantages which may accrue to them from the strict application of the Venezuelan laws applicable to the premises.

The definite provision of article III and that which article IV of the protocol contains relate solely to negotiations of Government with Government, which refer to the manner of paying obligations incurred, be it by contract, by former arbitral decisions, or by those which the

[a] Page 496.

present Commission may pronounce. It is solely for the respective Governments to determine the manner of payment by special agreement, and in no way can this be attributed to the arbitrators, who are only called upon to decide concerning the justice of the claim and to determine the amount which the Government of Venezuela has to pay, in case it has to pay, taking into consideration the facts and foundation of the claim.

It is to be observed that among the 40 claims which have been presented before this Commission up to date, embraced in article II of the protocol signed at Paris February 19, 1902, the claim concerning which this decision is given is the first to set up the extraordinary and rash contention that there be attributed to the diplomatic debt by the arbitrators a value of 40 per cent, thereby causing a notorious injury to the actual holders of said debt and to those who are authorized by the findings of this Commission to receive in payment of their debt, according to the terms of the protocol, bonds of the said diplomatic debt. Such an arbitrary proceeding would cause the continued depreciation of the value of the debt until it destroyed it completely, and the holders of it would be the first to suffer the consequences of the values established against the economic rules which govern public securities.

Therefore this portion of the claim is disallowed, and it is admitted for the principle and interest estimated until the 15th of September of the present year, or, say, three months after the date of the present award, amounting to 41,377.78 bolivars.

The French Commissioner concurred in this opinion.

LALANNE AND LEDOUR CASE.

Damages allowed because of unjustified refusal of customs officials to clear ship from Venezuelan port.

PAÚL, *Commissioner* (for the Commission):

This claim is composed of 34,376.40 bolivars demanded by G. Lalanne for damages and injuries resulting from the fact that the head of the custom-house of Ciudad Bolívar did not permit the shipment, in June, 1886, on the steamer *Dieu Merci*, of 120 head of cattle which Gen. G. Ballistini held ready to send to Guayana, as had been done in other prior shipments, in order to fulfill the contract made by Lalanne with the governor of French Guayana, for furnishing meat to the penitentiary, garrison, and other administrations of Guayana, and for 14,400 bolivars which the owner of the steamer *Dieu Merci* demands for the freight which the cargo of 120 head of cattle ought to have produced him, at 120 francs each, of which he was deprived.

From the documents presented in this claim and in that of G. Ballistini, which is joined with it, it is seen that G. Lalanne periodically sent to Ciudad Bolívar a steamship to load cattle destined for Guayana for the purpose of complying with contract with the governor of said colony; that a contract being in existence, made between Messrs. Fonseca, Navarro & Co., merchants, of Ciudad Bolívar, with the National Government, which accorded them the exclusive privilege of exporting cattle by steamships, which said firm ought to have put in operation for the navigation of the Orinoco River between Ciudad Bolívar

and the West Indies; that they had consented to the exporting of cattle in steamers sent by Lalanne, charging for each shipment 8 bolivars per head; that in its turn the national custom-house in Ciudad Bolívar required, in order to give permission for shipments of cattle, that there be presented by the shipper the order or permission of Fonseca & Co. showing the payment to them of the tax imposed; that in accordance with this rule G. Ballistini had been permitted to ship cattle for Cayena in steamships, by order and for the account of Lalanne, up to the number of 767 head, from September, 1885, to March, 1886, Ballistini having paid to Fonseca, Navarro & Co., the sum of 6,136 bolivars, as is proven by the receipt of cash by Alejandro Mantilla, as attorney for Fonseca & Co.; that in the month of June, 1866, the steamer *Dieu Merci* arrived at Ciudad Bolívar to load the customary 120 head of cattle which G. Ballistini had ready for this journey upon the order and for the account of Lalanne, and that it was not possible to complete the shipment because the custom-house had refused to permit it, alleging that the order of Fonseca & Co. had not been presented to it, as was necessary; that it was impossible to obtain this order because Messrs. Fonseca & Co. refused to give it, notwithstanding that payment of the tax was offered them, as had been done before, and even Ballistini had offered to buy from Fonseca & Co. their own cattle and ship them in place of those Ballistini held ready; that these refusals of Fonseca & Co. and that of the maritime government house at Ciudad Bolívar caused the detention for several days of the steamer *Dieu Merci* in the harbor of Ciudad Bolívar, and caused it to depart from the port without loading the cattle under the protest of the captain; and, finally, it is also proven that in the months following, the voyages of the steamer and the shipments of cattle were continued for the account of Lalanne, the shipment being permitted by the Government custom-house at Ciudad Bolívar, because the hindrances placed upon traffic in cattle on the Orinoco by the house of Fonseca & Co. had, in fact, ceased.

During the period of the first events the president of the State of Guayana was Gen. Raimundo Fonseca, an active member of the firm of Fonseca, Navarro & Co., and at the time when the opposition of said house to the shipment of cattle in Ciudad Bolívar ceased General Fonseca ceased to be president of that section, being called by Gen. Guzmán Blanco to form a part of his cabinet in September, 1886. These facts being taken into consideration in the light of an impartial and just appreciation, the conviction results that an abuse of authority was committed by the president of the State of Guayana by refusing, in his capacity as an associate of the firm of Fonseca & Co., to permit the shipment of cattle under the same conditions that his commercial firm had adopted in prior shipments, and that this abuse was arbitrarily sustained by the chief of the customs of Ciudad Bolívar, who ought to have authorized the shipment upon learning that the owners of the cattle were disposed to pay to Fonseca & Co. the same duties or taxes which in prior shipments they had received. This dual entity of first magistrate of a body politic and partner of a commercial firm putting in action the influences of his power in order to obtain pecuniary benefits at the cost of legitimate interests created under the protection of the constitutional guaranties naturally produced a disturbance in the dealings established at Ciudad Bolívar by Lalanne for the shipment of cattle, and gave rise to the present claim, which, even if excessively

exaggerated, has in its favor the principle of equity. Having admitted this in the claim of Lalanne and Ledour, the former a contractor in the purchase and exportation of cattle for Cayena and the latter the owner of the steamer *Dieu Merci*, the Venezuelan Commissioner proceeds to estimate the damage suffered by both.

The death of the 29 head of cattle, which Lalanne claims took place in the journey from Demerara to Cayena, is not proven, and it is only proven that the *Dieu Merci* took on board at Cayena 75 head of cattle coming from Demarara. Nor is the difference in price between the cost of the cattle bought at Demarara and the cost of the cattle in Ciudad Bolívar destined for the shipment proved. The prospective profit of 122.50 bolivars for each head of cattle which the contractor believed he would obtain for the 120 head which ought to have been shipped from Ciudad Bolívar is exaggerated, since it is equivalent to 100 per cent on the price of the cattle in that city; besides this, damage can not be demanded except for 45 head, since 75 were unloaded in Cayena upon that voyage of the *Dieu Merci*, and upon them the contractor realized the profit which they ought to have yielded. There is likewise an exaggeration in the demand of the shipowner for 14,400 bolivars for the freight upon 120 head of cattle which he did not take on at Ciudad Bolívar, since this damage is reduced to the freight on 45 fewer cattle loaded upon said voyage, to the expenses of delay during his stay at Ciudad Bolívar, and to those of the journey and stay at Demerara.

Taking these points into consideration, the Venezuelan Commissioner allows G. Lalanne an indemnity of 4,000 bolivars, and the owner of the ship *Dieu Merci* 4,000 bolivars—in all, for the total claim, 8,000 bolivars.

The French Commissioner concurred in this opinion.

BALLISTINI CASE.

Damages allowed claimant for unjustified refusal of customs officials to clear ship, whereby claimant suffered injury.

Damages allowed for wrongful imprisonment.

Claim for payment of outstanding bonds disallowed because of want of proof of ownership thereof.

Claim allowed against Federal Government for supplies furnished the State of Guayana.

PAÚL, *Commissioner* (for the Commission):

This claim is composed of ten distinct items, which the petitioner classifies, estimating the amount of each one of them, wherefore this opinion will refer particularly to each of them, examining the origin and the proofs upon which they are based, and will indicate the opinion which the corresponding demand for indemnity may merit.

1. For hindrances opposed to the departure of the French steamer *Dieu Merci* with a cargo of cattle destined for Demerara and Cayena, and the consequent necessity of leaving this cargo on shore when the cattle were destined for the provision of the government of Cayena, the claimant demands 100,000 bolivars.

A claim on account of these same facts has been presented before this Commission by Messrs. G. Lalanne and H. Ledour, the former a contractor for the furnishing of cattle for the Government of French

Guayana, and the latter the owner of the steamer *Dieu Merci*, and that claim was decided, an allowance of 8,000 bolivars being made for the damages, because the custom-house at Ciudad Bolívar did not allow the shipment of 120 head of cattle destined by Ballistini to fulfill the order of shipment for his constituent, Lalanne. The cattle appear to have been the property of Ballistini, who sold them to Lalanne at a given price. It does not appear that these cattle were lost or decreased in value as a consequence of remaining in Ciudad Bolívar, and it is proved that the voyage of the steamers and shipment of cattle continued without interruption, Ballistini himself carrying out said shipment for the account and by order of Lalanne.

The injury suffered by Ballistini, who is the owner of pasture lands on the banks of the Orinoco, was nothing but his returning these cattle to the pastures or their sale in Ciudad Bolívar at a price not so high as the transaction of Lalanne assured him. Estimating this expense or loss conservatively, the sum of 5,000 bolivars is allowed in this respect.

2. For the matter of Caliman, civil chief of Ciudad Bolívar, who (according to the record) has committed injustices in detriment to his interests, 20,000 bolivars.

From the record it appears only that the civil chief, Caliman, ordered the withdrawal from public market of Ciudad Bolívar a quantity of raw meat, which Ballistini had sent there for its sale, disobeying positive orders not to do so, because this act was contrary to a contract made with certain persons for the furnishing of meat in the market. The meat withdrawn was attached and sold at public auction by the police officer. There exists no other proof referring to the action of the civil authority against the interests of claimants, and no claim against the nation can be founded upon this procedure of municipal regulation.

3. For the claim of Pereira Alvarez, judge of the first instance at Ciudad Bolívar, who, as Ballistini says, has committed abominable injustices against his person and against his interests, for which he has not been able to obtain any reparation before the tribunals, 40,000 bolivars.

It is proven that because Ballistini had protested against the action of the civil chief, Caliman, in withdrawing from the market his raw meat, a protest which the subtreasurer of Ciudad Bolívar did not wish to record, because he considered it offensive to the authority, Judge Pereira Alvarez rendered judgment for calumny and injuries against Ballistini, and issued an order of arrest against him and a mandate to all the authorities to carry it into effect. Ballistini fled from the locality and came to the capital of the Republic seeking protection. The son of Ballistini complained to the judge, and the latter revoked the order of detention, because the offense had not been proven, that is, because there was nothing injurious or calumnious in Ballistini's protest. Ballistini sued the judge, Pereira Alvarez, before the court for neglect in the exercise of his duties, but the court could not move because Ballistini was not able to obtain the necessary copies of documents which the judge in question ought to have ordered to be issued to him, and his solicitations in this regard before the president of the State and other local officials were futile. These facts prove the denial of justice, because the local authorities deprived Ballistini of the legal means of instituting before the competent tribunals the actions which the laws would authorize him in case he might improperly have been

condemned to a criminal judgment. In this respect the Venezuelan Commissioner believes that Ballistini is entitled to an indemnity which, in relation to the offense and the injuries which the arbitrary order of detention of the judge caused him, he estimates at 25,000 bolivars.

4. This item of the claim is a demand for indemnity amounting to 75,000 bolivars for principal and interests for a certain number of coupons or bonds of the debt of the State of Guayana, of which Ballistini says he is the owner, and that by decree of President-General Fonseca, it was ordered that they should not be admitted as had been the custom in payment in the tax offices of the State unless they had been redeemed up to date. The claimant has not presented the original bonds or any part of them which he may have in his possession. The failure to present said bonds makes an appreciation regarding the legitimacy of the claim impossible because its essential foundation, which is the ownership or existence under the control of Ballistini of such certificates or bonds and the exact ascertainment of their amount, is wanting. Besides this circumstance, which by itself alone nullifies the claim, it appears from the claim of Ballistini himself that these bonds are nothing else but bonds of a public debt of the State of Guayana extinguishable from the time of their issue in 1878 by 10 per cent of the ordinary receipts of the treasury of the State; that later, in November, 1882, the President of the State suspended the circulation of said bonds, and on December 9 of said year he issued a decree ordering their redemption by means of payments to be made out of an allotment of 25 per cent of the special revenue of the State of Bolívar destined for the section of Guayana on June 7, 1884, and payment was made whereby the value of the bonds was reduced from 104,837 bolivars, the amount of the first issue, to the sum of 49,507 bolivars, which sum Ballistini says was completely in his possession; that the effects of the financial crisis that took place at that time and the reduction of 25 per cent in the revenue of the allowance and by the territorial revenues hindered the continuation of the extinguishment, and finally that the legislature of the State by a legislative act of 1888 passed a law concerning the public debt which had as an object to consolidate all the debts of the State. It is to this decree that the judgments of the court in the various grades of jurisdiction of the State of Bolívar have remitted Mr. Ballistini in the suit which he instituted against the treasury of the State for the payment of the bonds which were in his possession. In May, 1890, Ballistini, the claimant instituted a proceeding of cassation against this decision in the supreme court of Ciudad Bolívar as a court of last resort, and on the 16th of that month the court of cassation granted the appeal which, as appears from the statement of Ballistini, was allowed to lapse.

There are, therefore, final judgments which decree that Ballistini, like any other holder of the internal debt of the State of Guayana, is obliged to submit himself to the laws or decrees which govern the extinguishment of said debt.

It is a principle of public international law that the internal debt of a state, classified as a public debt, which is subject to speculations current amongst that sort of values which are acquired freely and spontaneously at very different rates of quotations which mark great fluctuations of their rise and fall, can never be the subject of international claims in order to obtain their immediate payment in cash[a] just as they

[a] In the Italian Commission (Boccardo case, not reported) judgment was given on internal bonds on authority of Aspinwall case, Moore, p. 3616.

can not be the subject of judgments before the tribunals of the country in order that their holders may obtain the payment of their nominal value. To establish such a principle would be to put a premium upon stock jobbing, which would be often possible with this sort of public values, and would place nations at the mercy of speculators who might obtain control of all their internal debt. The certificates or bonds, in question in the matter of the claim of Ballistini, in this subdivision, are in the same condition as the internal debt of the nation, which amounts to many millions and bears interest, and it is more than four years since payment for its extinguishment and the payment of interest has been suspended on account of the abnormal condition caused by the war. Could these mixed commissions have jurisdiction to decide claims which the foreign holders of this internal debt might present to them in order to obtain the payment of the principal and interests?

This could not be sustained even with respect to the foreign, or as it is called diplomatic debt, of 3 per cent, nor with respect to any public debt which has been put upon the speculative market and may therefore pass from hand to hand by virtue of transactions prompted daily by those who profit from the rise and fall of public securities.

This portion of the claim is declared inadmissible, because it can not be prosecuted before this Commission.

5. This portion of the claim arises out of the recovery of a private debt which Mr. Hernandez Lopez contracted in favor of Ballistini, amounting to the sum of 12,228 bolivars, and which gave rise to a suit prosecuted before the competent judge of Ciudad Bolívar, in which judgment was rendered and ordered to be executed ordering the attachment of the property of the debtor. This attachment could not be carried into effect because Hernandez disappeared from the place of execution and the property of the debtor could not be found upon which to lay it. Ballistini seeks to make the nation responsible for the insolvency of his private debtor, an unsustainable and evidently rash pretension, which only indicates in the petitioner a true monomania for claims. The amount of this portion of the claim therefore is disallowed, which is 25,000 bolivars.

6. The claim of 35,000 bolivars for a certain quantity of *sarrapia*, which was declared contraband after a formal judgment which was twice appealed and terminated in the full Federal court confirming the judgments of the first and second instances, which condemned Ballistini to lose the sacks of *sarrapia*, a contraband article, and to the payment of double duties, lacks all foundation, because there is upon this matter res judicata, and it ought therefore to be disallowed.

(Items 7, 8, and 9 dismissed for want of proof.)

10. For the value of a certificate issued in favor of Domingo María Ballistini April 29, 1891, by the general internal treasurer of the State of Bolívar, recognizing the debt against the old State of Guayana, amounting to 13,780 bolivars, for supplies made to the State of Guayana and by order of the citizen president of the same State, No. 2307. This is admitted for said sum.

For interests upon this receipt and other general injuries there is allowed by the arbitrators the sum of 6,220 bolivars.

This claim was allowed for 50,000 bolivars.

DANIEL CASE.

Prescription unless pleaded by the debtor will not be taken into consideration by the Commission.

PAÚL, *Commissioner* (for the Commission):

The claimants, in their capacity of French citizens, and sole and legitimate children of P. Claudius Piton and Augustina Piton, née Lemoine, as appears from the public documents which have been presented before this Commission, demand from the Government of Venezuela the payment of the sum of 489,468.64 bolivars for capital and interest accrued since the date of their claim, arising out of the acknowledgment made by the minister of interior and justice on January 7, 1868, and by a resolution of the same date marked No. 5, in favor of Messrs. A. Lemoine & Co., for the following amounts: For the balance due on a credit of $50,000, to which they have a right by the contract of July 20, 1856, made with the honorable municipal council of La Guaira, and approved by the government of the former Province of Caracas on August 28 of the same year, said contract having as an object the furnishing of drinkable water to the city of La Guaira by means of an iron pipe, the construction of various public fountains, the building of a reservoir for the storage of the waters, and the repairing of the aqueduct in various places, $38,411.16.

For interest accrued upon this balance at the rate of 6 per cent per annum from June 1, 1860, until December 31, 1867	$16,751.50
For damages and injuries which A. Lemoine & Co. claim for the breach of the contract (it being remembered that this amount is much less than what the profit of 1 per cent per month would have been which was indicated as simple interest in the original contract)	7,500.00
	62,662.66

It was moreover resolved that this sum of $62,662.66 should be paid by the administration of the revenues of the department of Vargas by the receipts from the public market of said city of La Guaira, and by the tariff for pure water which should be collected at that place, the payments having to be made monthly and the account to bear interest at said rate of 6 per cent per annum only upon the balance of $38,411.16, since in no case could interest be paid upon interest.

As appears from the documents registered at La Guaira on January 28, 1868, under No. 4, protocol 8, the collector of revenues of the municipal council of the department of Vargas, Mr. G. Quevedo, by virtue of the special authorization of said body, by said instrument, put Messrs. A. Lemoine & Co. into possession of the receipts of the market and of pure water which might be collected by the administration of municipal revenues of the department of Vargas, its product to be delivered monthly, without any other reduction except what might be caused by its collection.

It appears from the documents presented that the administrative council of the department of Vargas carried on with A. Lemoine & Co. an open account in fulfillment of the resolution of the ministry of the interior and justice, under the division of districts until November 1, 1871, when the change of application of the funds destined for the extinction of the capital acknowledged to be due A. Lemoine & Co. and the interest on said capital at one-half per cent per month. From this last account it appears that upon the above date, November

1, 1871, the municipal council of the department of Vargas owed A. Lemoine & Co. the following:

For capital	$31,944.04
Interest	25,234.62
Damages and injuries acknowledged	7,500.00
	64,678.66

An account has been presented bearing date April 17, 1882, showing an amount due of $84,643.66 as the balance of the capital and interest in favor of A. Lemoine & Co. and a note addressed by the president of the municipal council of the district of Vargas, dated June 1, 1883, No. 188, to Mr. Daniel Dibble, in order that he might transmit it to the heirs of A. Lemoine, deceased, wherein he announced to them that said municipal council at its session of June 7, 1883, had resolved with reference to the claim presented by said heirs upon March 31 of said year, to approve the opinion of representative Manuel F. Sojo couched in the following terms:

> That it being a matter of the greatest importance, and his many duties not permitting him to examine it, he returned it, indicating that he thought it would be well to have the advice of a lawyer.

The president of the council in said communication also announced that the body had postponed until another session the choice of the lawyer to be consulted.

Under letters D and E two plain copies of the two communications, the first addressed in July, 1895, by Carlos Piton in his own right, and Santiago Carias as the representative of Amelia and Isabel Piton to the municipal council of the department of Vargas, in which they requested that order be given that a liquidation might be made showing the indebtedness of said council to the heirs of Augusto Lemoine on account of the iron pipe line at La Guaira, in accordance with the contract in the premises which appeared in evidence in said record, and they demanded that a certified copy be issued to them of such liquidation.

The second communication, dated at Caracas in September, 1896, is written by the same petitioners and was addressed to the president of the State of Miranda, of which State the city of La Guaira then formed a part, asking said official that he examine the documents which the demand mentioned and that he might signify that he considered it just, and that he might fix upon a fortnightly payment for the gradual extinguishment of the debt. It is not proved that these two demands have reached their destination, and that consequently any determination with respect to them was reached.

From the facts stated, it appears that an agreement duly recorded existed by which the National Government through its official, the minister of the interior and justice, acknowledged an indebtedness in favor of Messrs. A. Lemoine & Co. of $66,682.66, as capital, interest, and damages, and injuries in January, 1868, ordering the gradual extinction of this debt by means of the receipts of the rents of the market and pure water of the city of La Guaira; that this agreement was performed for the space of three years and ten months, Messrs. A. Lemoine & Co. receiving from the municipal rents of the district of Vargas various sums from said rents, which extinguished in part the balance owed upon the capital, and that portion owed for interest increased, whereby, by November 1, 1871, the general balance of the

running account in favor of A. Lemoine & Co. amounted to $64,678.66; that from this last date it does not appear that there has ever been any action taken by the owner of the debt directly, nor by their legitimate successors in interest, before the competent tribunals or officials of the country, demanding the fulfillment of the agreement made with the municipal corporation of La Guaira. It is not possible to leave out of consideration this notable circumstance which as a consequence has caused the default in payment of a debt, recognized by a public instrument, for the extinguishment of which the party debtor had set aside certain receipts of the municipal revenues, thus constituting a pledge which in law establishes a legal right in favor of the creditor.

It is a notorious fact that the district of Vargas has since the year 1871 passed through a series of political and economic changes which have radically altered its organization and greatly decreased for various reasons the receipts of the municipal revenues.

The liability which might attach to the National Government to-day for a debt which was originally contracted by the municipal council of the district of Vargas, of the former province of Caracas, and which debt should be paid by these very municipal revenues which said corporation administered, can not be founded legally except in the ultimate territorial distribution sanctioned by the constitution of 1901 whereby the States obligated themselves to cede to the nation, among other cities, that of La Guaira.

Upon the date of this session the debt due the successors in interest of A. Lemoine had for a great many years remained without action, without their having been presented before this Commission any sufficient reason or motive to show that that situation was not owing to the neglect of the creditor and his legitimate successors in interest. The reason upon which all legislations base the right of the debtor to invoke prescription as a means of extinguishing an obligation is the abandonment in which the creditor has for a number of years left the exercise of his right, the legal presumption of payment arising therefrom. Prescription has not been invoked before this Commission in the present case by the Government of Venezuela, wherefore it can not of its own motion take it into consideration, in conformity with the principles which govern, but there is no right for the allowance of interest upon the amount of the debt; and taking moreover into consideration that the amount shown to be due by the liquidation of November 1, 1871, includes an item of $7,500 for damages, and at the same time another amount for interest up to that date upon the capital at 6 per cent, which amounts to the sum of $25,234.62; and that in all equity this double idemnity should not be allowed for interest and for damages, there should be deducted from the total amount of said liquidation the sum of $7,500, and the balance in favor of the successors in interest of A. Lemoine should be allowed, say the sum of 228,714.64 bolivars, without interest.

(This opinion was concurred in by the French arbitrator.)

SUMMARY OF CLAIMS.

Number of claims submitted		75
Number of claims withdrawn	1	
Number of claims in which awards were given	37	
Number of claims dismissed for want of jurisdiction	2	
Number of claims disallowed	27	
Number of claims referred to umpire in Paris	8	
		75

	Bolivars.	Bolivars.
Amount of claims presented		61,334,352.45
Amount of claims withdrawn	336,000.00	
Amount of claims dismissed for want of jurisdiction	22,311.00	
Amount of awards made	1,437,021.01	
Amount of claims disallowed	9,068,908.08	
Amount of reduction of claims in which awards were made	7,482,064.86	
Amount of claims referred to umpire at Paris	42,988,047.50	
		61,334,352.45

NOTE.—At the time of going to press the umpire had not acted on the claims referred to him.

GERMAN-VENEZUELAN MIXED CLAIMS COMMISSION.

PROTOCOL OF FEBRUARY 13, 1903.

Protokoll zwischen dem Kaiserlich Deutschen Ausserordentlichen Gesandten und bevollmächtigten Minister Herrn Freiherrn Speck von Sternburg als Bevollmächtigten der Kaiserlich Deutschen Regierung und dem Gesandten der Vereinigten Staaten von Amerika Herrn Bowen als Bevollmächtigten der Venezolanischen Regierung ist zur Beilegung der zwischen Deutschland und Venezuela entstandenen Streitigkeiten nachstehendes Protokoll abgeschlossen worden:

ARTIKEL I.

Die Venezolanische Regierung erkennt im Prinzip die von der Kaiserlich Deutschen Regierung erhobenen Reklamationen deutscher Unterthanen als berechtigt an.

ARTIKEL II.

Die deutschen Reklamationen aus den venezolanischen Bürgerkriegen von 1898 bis 1900 belaufen sich auf 1,718,815.67 Bolivares. Die Venezolanische Regierung verpflichtet sich von diesem Betrag Pf. Sterling 5,500=137,500 Bolivares (Fünftausend fünfhundert Pfund Sterling=Einhundert sieben und dreissig tausend fünfhundert Bolivares) sofort bar zu bezahlen und zur Tilgung des Restes fünf am 15 März, 15 April, 15 Mai, 15 Juni und 15 Juli 1903 an dem Kaiserlich Deutschen Gesandten in Caracas zahlbare Wechsel über entsprechende Teil-

Whereas certain differences have arisen between the United States of Venezuela and Germany in connection with the claims of German subjects against the Venezuelan Government, the undersigned, Mr. Herbert W. Bowen, duly authorized by the Government of Venezuela, and Baron Spec von Sternburg His Imperial German Majesty's Envoy Extraordinary and Minister Plenipotentiary, duly authorized by the Imperial German Government, have agreed as follows:

ARTICLE I.

The Venezuelan Government recognize in principle the justice of the claims of German subjects presented by the Imperial German Government.

ARTICLE II.

The German claims originating from the Venezuelan civil wars of 1898 to 1900 amount to 1,718,815.67 bolivars. The Venezuelan Government undertake to pay of said amount immediately in cash the sum of £5,500=137,500 bolivars (five thousand five hundred pounds=one hundred thirty-seven thousand five hundred bolivars) and for the payment of the rest to redeem five bills of exchange for the corresponding installments payable on the 15th of March, the 15th of April, the 15th of May, the 15th of June and the 15th of July, 1903, to

beträge seinzulasen, die Herr Bowen sofort ausstellen und Herrn Freiherrn von Sternburg übergeben wird. Sollte die Venezolanische Regierung diese Wechsel nicht einlösen, so soll die Zahlung aus den Zolleinkünften von La Guaira und Puerto Cabello erfolgen, und soll die Zollverwaltung in den beiden Häfen bis zur vollständigen Tilgung der erwähnten Schulden belgischen Zollbeamten übertragen werden.

the Imperial German Diplomatic Agent in Caracas. These bills shall be drawn immediately by Mr. Bowen and handed over to Baron Sternburg. Should the Venezuelan Government fail to redeem one of these bills the payment shall be made from the customs receipts of La Guaira and Puerto Cabello, and the administration of both ports shall be put in charge of Belgian Custom house officials until the complete extinction of the said debts.

ARTIKEL III.

Die in Artikeln II und VI nicht erwähnten deutschen Reklamationen, insbesondere die Reklamationen, welche aus dem gegenwärtigen venezolanischen Bürgerkriege herrühren, ferner die Ansprüche der Deutschen Grossen Venezuela Eisenbahn-Gesellschaft gegen die Venezolanische Regierung wegen Beförderung von Personen und Güter sowie die aus dem Bau eines Schlachthauses in Caracas entstandenen Forderung des Ingenieurs Karl Henckel in Hamburg und der Aktiengesellschaft für Beton- und Monierban in Berlin werden einer gemischten Kommission überwiesen.

Diese Kommission hat sowohl über materielle Berechtigung der einzelnen Forderungen wie über deren Höhe zu entscheiden. Bei den Reklamationen wegen widerrechtlicher Beschädigung oder Wegname von Eigentum erkennt überdies die Venezolanische Regierung ihre Haftpflicht in Prinzip an, dergestalt, dass die Kommission nicht über die Frage der Haftpflicht sondern lediglich über die Widerrechtlichkeit der Beschädigung oder Wegnahme sowie über die Höhe der Entschädigung zu befinden hat.

ARTICLE III.

The German claims not mentioned in the Articles II and VI, in particular the claims resulting from the present Venezuelan civil war, the claims of the Great Venezuelan Railroad Company against the Venezuelan Government for passages and freight, the claims of the Engineer Carl Henckel in Hamburg and of the Beton and Monierban Company Limited in Berlin for the construction of a slaughter house at Caracas are to be submitted to a Mixed Commission.

Said Commission shall decide both whether the different claims are materially well founded and also upon their amount. The Venezuelan Government admit their liability in cases where the claim is for injury to or a wrongful seizure of property and consequently the Commission will not have to decide the question of liability, but only whether the injury to or the seizure of property were wrongful acts and what amount of compensation is due.

ARTIKEL IV.

Die im Artikel III erwähnte gemischte Kommission hat ihren Sitz in Caracas. Sie setzt sich zusammen aus je einem von der Kaiserlich Deutschen und der Venezolanischen Regierung zu ernennenden Mitglied. Die Ernennung hat bis zum 1, Mai 1903 zu erfolgen. Soweit sich die beiden Mitglieder über die erhobenen Ansprüche einigen, ist ihre Entscheidung als entgültig anzusehen, soweit eine Einigung unter ihnen nicht zu stande kommt, ist zur Entscheidung ein Obmann zuzuziehen, der von dem Präsidenten der Vereinigten Staaten von Amerika ernannt wird.

ARTIKEL V.

Zur Befriedigung der im Artikel III bezeichneten Reklamationen sowie der gleichartigen Forderungen anderer Mächte wird die Venezolanische Regierung vom 1 März 1903, ab monatlich 30 % der Zolleinkünfte von La Guaira und Puerto Cabello unter Ausschluss jeder anderen Verfügung dem Vertreter der Bank von England in Caracas überwiesen. Sollte die Venezolanische Regierung dieser Verpflichtung nicht nachkommen, so soll die Zollverwaltung in den beiden Häfen bis zur vollständigen Befriedigung der vorstehend erwähnten Forderungen belgischen Zollbeamten übertragen werden.

Alle Streitfragen in Ansehung der Verteilung der im Absatz 1 bezeichneten Zolleinkünfte sowie in Ansehung des Rechts Deutschlands, Gross-Britanniens und Italiens auf gesonderte Befriedigung ihre Reklamationen sollen in Ermangelung eines anderweitigen Abkommens durch den ständigen

ARTICLE IV.

The Mixed Commission mentioned in Article III shall have its seat in Caracas. It shall consist of two members, one of which is to be appointed by the Government of Venezuela, the other by the Imperial German Government. The appointments are to be made before May 1st, 1903. In each case where the two members come to an agreement on the claims their decision shall be considered as final; in cases of disagreement the claims shall be submitted to an umpire to be nominated by the President of the United States of America.

ARTICLE V.

For the purpose of paying the claims specified in Article III as well as similar claims preferred by other powers the Venezuelan Government shall remit to the representative of the Bank of England in Caracas in monthly installments, beginning from March 1st, 1903, 30 per cent. of the customs revenues of La Guaira and Puerto Cabello, which shall not be alienated to any other purpose. Should the Venezuelan Government fail to carry out this obligation, Belgian customs officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government in respect of the above-mentioned claims shall have been discharged.

Any question as to the distribution of the custom revenues specified in the foregoing paragraph, as well as to the rights of Germany, Great Britain and Italy to a separate payment of their claims, shall be determined, in default of another agreement, by the permanent Tribunal of Arbitration at

Schiedshof im Haag entschieden werden. An dem Schiedsverfahren können sich alle anderen interessierten Staaten den genannten drei Mächten gegenüber als Partie beteiligen.

The Hague. All other powers interested may join as parties in the Arbitration proceedings against the above-mentioned three powers.

ARTIKEL VI.

Die Venezolanische Regierung verpflichtet die zum grössten Teil in deutschen Händen befindliche 5 prozentige venezolanische Anleihe von 1896 zugleich mit ihre gesamten auswärtigen Schuld in befriedigender Weise neu zu regeln. Bei dieser Regelung sollen die für den Schuldendienst zu verwendenden Staatseinkünfte unbeschadet der diesbezüglich bereits bestehenden Verpflichtungen bestimmt werden.

ARTICLE VI.

The Venezuelan Government undertake to make a new satisfactory arrangement to settle simultaneously the 5% Venezuelan Loan of 1896 which is chiefly in German hands and the entire exterior debt. In this arrangement the state revenues to be employed for the service of the debt are to be determined without prejudice to the obligations already existing

ARTIKEL VII.

Die von den deutschen Seestreitkräften weggenommenen venezolanischen Kriegs- und Handelsfahrzeuge werden in dem Zustande, in dem sie sich gegenwärtig befinden, der Venezolanischen Regierung zurückgegeben. Aus der Wegnahme dieser Schiffe wie aus deren Aufbewahrung können keine Entschädigungsansprüche hergeleitet werden. Auch wird ein Ersatz für Beschädigung oder Vernichtung der Schiffe nicht gewährt.

ARTICLE VII.

The Venezuelan men-of-war and merchant vessels captured by the German naval forces shall be returned to the Venezuelan Government in their actual condition. No claims for indemnity can be based on the capture and on the holding of these vessels, neither will an indemnity be granted for injury to or destruction of the same.

ARTIKEL VIII.

Nach Unterzeichnung dieses Protokolles soll die über die venezolanischen Häfen verhängte Blockade gemeinsam mit den Regierungen Gross-Britanniens und Italiens aufgehoben werden. Auch werden die diplomatischen Beziehungen zwischen der Kaiserlich Deutschen und der Venezolanischen Regierung wieder aufgenommen.

ARTICLE VIII.

Immediately upon the signature of this Protocol the blockade of the Venezuelan ports shall be raised by the Imperial German Government in concert with the Governments of Great Britain and Italy. Also the diplomatic relations between the Imperial German and Venezuelan Governments will be resumed.

So geschehen in doppelter Ausfertigung in deutscher und englischer Sprache zu Washington am dreizehnten Februar Eintausend neunhundert und drei.

Done in duplicate in English and German texts, at Washington this thirteenth day of February one thousand nine hundred and three.

HERBERT W. BOWEN. [SEAL]
H. STERNBURG. [SEAL]

PROTOCOL, MAY 7, 1903.

Von dem Kaiserlich Deutschen Gesandten Herrn Freiherrn Speck von Sternburg als Bevollmächtigten der Kaiserlich Deutschen Regierung und dem Gesandten der Vereinigten Staaten von Amerika Herrn Herbert W. Bowen als Bevollmächtigten der Venezolanischen Regierung ist zur Ausführung der Artikel 3 und 4 des deutsch-venezolani schen Protokolls vom 13. Februar 1903 nachstehendes Abkommen über die zur Feststellung der deutschen Reklamationen berufene gemischte Kommission unterzeichnet worden.

The Imperial German Minister Baron Speck von Sternburg as representative of the Imperial German Government, and Mr. Herbert W. Bowen as plenipotentiary of the Government of Venezuela, in order to carry out the provisions contained in articles III and IV of the German-Venezuelan protocol of February 13, 1903, have signed the following agreement with reference to the Mixed Commission which shall have to decide upon the German claims.

ARTIKEL I.

Die von der Kaiserlich Deutschen und der Venezolanischen Regierung su ernennenden Mitglieder der gemischten Kommission treten am 1. Juni 1903 in Carácas zusammen. Der von dem Präsidenten der Vereinigten Staaten von Amerika zu ernennende Obmann tritt sobald als möglich, spätestens aber am 1. Juni 1903 in die Kommission ein.

Der Obmann ist zu den Verhandlungen und Entscheidungen zuzuziehen, sobald das deutsche und das venezolanische Mitglied sich über eine Frage nicht einigen können oder es sonst für angezeigt erachten. Bei Zuziehung des Obmanns führt dieser den Vorsitz.

Wenn nach dem Zusammentritte der Kommission der Obmann oder

ARTICLE I.

The members of the Mixed Commission who are to be appointed by the Imperial German Government and Government of Venezuela shall meet at Caracas June 1, 1903. The umpire who is to be nominated by the President of the United States of America shall join the Commission as soon as possible, and not later than on the first of June, 1903.

The umpire is to be consulted in the proceedings and decisions whenever the German and the Venezuelan Commissioners fail to agree or otherwise deem it appropriate. Whenever the umpire is present at the meeting he shall preside.

If after the convening of the Commission the umpire or either

eines der beiden anderen Mitglieder in Wegfall kommt, so soll dessen Nachfolger sofort in derselben Weise wie das weggefallene Mitglied ernannt werden.

Das deutsche und das venezolanische Mitglied haben zu ihrer Unterstützung bei den Kommissionsarbeiten je einen der deutschen und der spanischen Sprache mächtigen Sekretär zu ernennen.

of the commissioners should be unable to fulfill his duties, his successor shall be appointed forthwith in the same manner as his predecessor.

The German and Venezuelan Commissioners shall each appoint a secretary versed in the German and Spanish languages who is to assist them in the transaction of the business of the commission.

ARTIKEL II.

Vor Beginn ihrer Thätigkeit sollen der Obmann und die beiden anderen Mitglieder in feierlicher Weise einen Eid oder eine eidesstattliche Versicherung dahin ableisten, dass sie die ihnen unterbreiteten Reklamationen sorgsam prüfen und unparteiisch nach den Grundsätzen der Gerechtigkeit sowie nach den Bestimmungen des Protokolls vom 13. Februar 1903 und des vorliegenden Abkommens entscheiden werden. Die Ableistung des Eides oder der eidesstattlichen Versicherung ist durch die Protokolle der Kommission festzustellen.

ARTICLE II.

Before assuming the functions of their office the umpire and both the commissioners shall make solemn oath or declaration carefully to examine and impartially decide according to the principles of justice and provisions of the protocol of the 13th of February, 1903, and of the present agreement, all claims submitted to them; the oath or declaration so made shall be embodied in the record of the proceedings.

Die Entscheidungen der Kommission über die Reklamationen sollen auf der Grundlage vollkommener Billigkeit sowie ohne Rücksicht auf Einwendungen technischer Art oder auf die Bestimmungen der Landesgesetzgebung erfolgen. Sie sind schriftlich in deutscher und spanischer Sprache abzufassen. Die zuerkannten Entschädigungsbeträge müssen angegeben werden als zahlbar in deutschem Golde oder dem Gegenwert in Silber, wie sich solcher zur Zeit der effektiven Zahlungen in Carácas stellen wird.

The decisions of the Commission shall be based upon absolute equity, without regard to objections of a technical nature or of the provisions of local legislation. They shall be given in writing both in German and Spanish. The awarded amounts of indemnity shall be made payable in German gold or its equivalent in silver, at the rate of exchange at the time of the real payment at Caracas.

ARTIKEL III.

Die Reklamationen sind bei der Kommission von dem Kaiserlich Deutschen Gesandten in Carácas bis zum 1. Juli 1903 anzumelden.

ARTICLE III.

The claims shall be presented to the commissioners by the Imperial German Minister at Caracas before the first day of July, 1893.

Diese Frist kann von der Kommission in geeigneten Fällen angemessen verlängert werden. Die Kommission hat über die einzelnen Reklamationen binnen sechs Monaten nach deren Anmeldung und sofern das deutsche und das venezolanische Mitglied sich nicht einigen, binnen sechs Monaten nach Zuziehung des Obmanns zu entscheiden.

Die Kommission ist verpflichtet, vor der Entscheidung das ihr von dem Kaiserlich Deutschen Gesandten in Carácas und der Venezolanischen Regierung vorgelegte Beweismaterial sowie mündliche oder schriftliche Ausführungen etwaiger Bevollmächtigten des Gesandten oder der Regierung entgegen zu nehmen und einer sorgfältigen Prüfung zu unterziehen.

Über die Verhandlungen der Kommission haben die in Artikel 1 Absatz 4 bezeichneten Sekretäre genaue Protokolle in zwei gleichlautenden Ausfertigungen zu führen, die von ihnen und von den an der Verhandlung beteiligten Mitgliedern der Kommission zu unterzeichnen sind. Nach Beendigung der Kommissionsarbeiten ist je eine Ausfertigung dieser Protokolle der Kaiserlich Deutschen und der Venezolanischen Regierung zur Verfügung zu stellen.

A reasonable extension of this term may in proper cases be granted by the Commissioners. The Commissioners shall be bound to decide upon every claim within six months from the day of its presentation, and in case of the disagreement of the German and the Venezuelan Commissioners, the umpire shall give his decision within six months after having been called upon.

The commissioners shall be bound before reaching a decision, to receive and carefully examine all evidence presented to them by the Imperial German Minister at Caracas, and by the Government of Venezuela, as well as oral or written arguments submitted by the agent of the Minister or of the Government.

The secretaries mentioned in Article I Section 4 of this agreement shall keep an accurate record of the proceedings of the Commission; which have to be drawn up in duplicate copies signed by the secretaries and members of the commission that have taken part in the proceedings. When the work of the commission comes to an end, a certified copy of each of these records is to be delivered to the Imperial German Government and to the Government of Venezuela.

Artikel IV.

Soweit nicht die vorstehenden Artikel besondere Bestimmungen enthalten, kann die Kommission selbst das Verfahren in der ihr geeignet scheinenden Weise regeln. Insbesondere ist sie befugt, selbst die Erklärungen der Reklamanten oder ihrer etwaigen Bevollmächtigten entgegen zu nehmen und die erforderlichen Beweise zu erheben.

Article IV.

Except as herein stipulated all questions of procedure shall be left to the determination of the commissioners; in particular they shall be authorized to receive the declarations of the claimants or their respective agents, and to collect the necessary evidence.

ARTIKEL V.

Der Obmann bezieht für seine Mühewaltung und Auslagen eine angemessene Entschädigung, die ebenso wie etwaige gemeinsame Kosten der Kommission von der Kaiserlich Deutschen und der Venezolanischen Regierung zu gleichem Anteile getragen wird.

Die Entschädigungen, die den beiden anderen Mitgliedern und den Sekretären der Kommission zu gewähren sind, werden von der Regierung getragen, von deren Seite diese Personen bestellt sind. Ebenso trägt jede Regierung die ihr sonst etwa erwachsenden eigenen Kosten.

Washington, den 7. Mai 1903.

ARTICLE V.

The umpire shall be entitled to a reasonable remuneration for his services and expenses, which is to be paid in equal moieties by the Imperial German Government and by the Government of Venezuela as well as any other expenses of the said Commission.

The remunerations to be granted to the two other members of the Commission and to the secretaries are to be paid by the Government by whom they have been appointed. In the same way each Government will have to pay any other expenses which it may incur.

Done in duplicate in German and English texts at Washington, the seventh day of May, one thousand nine hundred and three.

STERNBURG. [SEAL.]
HERBERT W. BOWEN. [SEAL.]

PERSONNEL OF GERMAN-VENEZUELAN COMMISSION.

Umpire.—Henry M. Duffield, of Detroit, Mich.
German Commissioner.—Hermann Paul Goetsch.
Venezuelan Commissioner.—Nicomedes Zuloaga.
German Secretary.—Paul Simmross.
Venezuelan Secretary.—Segundo Antonio Mendoza.
Umpire's Secretary.—Fernando G. Echeverría, of New York, N. Y.

RULES OF THE GERMAN-VENEZUELAN COMMISSION.

I.

The secretaries of the Commission shall keep a book in which they shall enter a list of all the claims as soon as they are formally presented. On each claim they shall make a note of the day on which it is presented to the Commission, and shall enter a minute of the claim in the register. The claims shall be numbered consecutively, beginning with No. 1, which shall be the number of the first claim presented.

II.

The secretaries shall keep a book of awards which the Commissioners, or, in case of disagreement, the umpire and the Commissioners, shall sign.

The secretaries are the custodians of the papers, documents, and books of the Commission.

III.

The Commission shall at its sessions enter upon the consideration of each claim as soon as the Commissioners shall have studied the respective proofs thereof and declare that they are in a position to do so. When the Commissioners shall have studied several claims and their respective proofs, they shall be considered in the same order in which they may have been presented to the Commission, unless the Commissioners for special reasons decide otherwise.

IV.

Should the Venezuelan Commissioner ask, in the case of any claim, that a statement supplemental to the proofs be submitted, the German minister in Caracas shall be requested to supply it.

V.

At any time before the decision of a case the Government of Venezuela shall have the right through its agent of opposing the claim and of presenting the proofs and allegations he may consider proper, or ask a time within which to do so. The provisions of this article shall in no wise alter the time set forth in the convention of May 7 for the decision of all the claims.

VI.

With reference to the claims which in accordance with the protocol and the convention appear to be duly presented, the Commissioners have the right for the purpose of throwing more light on the matter to exact the presentation of documents or other supplemental proofs, provided that by so doing the period fixed by the convention on the 7th of May, 1903, for the settlement of the claims is not altered.

VII.

The sessions of the Commission shall be private, except when the Commissioners shall in special cases direct otherwise, and the proceedings shall not be made public by the Commission or its members until the Commissioners shall have made their reports to their respective Governments.

This rule shall in no manner curtail the right of said Governments or of its agents, to proceed in the manner they may consider most favorable to their interests, nor the right of the members of the Commission to make private use of any information they may think will aid them, in the better fulfillment of their duties, in throwing light on some fact, or even settling some point of law.

OPINIONS IN THE GERMAN-VENEZUELAN COMMISSION.

CHRISTERN & CO., BECKER & CO., MAX FISCHBACH, RICHARD FRIEDERICY, OTTO KUMMEROW, AND A. DAUMEN CASES.

No interest, *eo nomine*, will be allowed on claims based solely upon injuries to the person.

Claims based upon contracts in which a certain rate of interest is stipulated shall carry interest at that rate from the date of the breach. In all other contractual claims interest will be computed at the rate of 3 per cent per annum from the date of the demand for payment of damages for the breach. [a]

Claims for wrongful seizures of or injuries to property shall bear interest only from the date of demand for payment of damages, and at the rate of 3 per cent per annum. [b]

Whenever interest is allowed it shall be computed to and including December 31, 1903. [c]

The Commission has no power under the protocols to provide for interest on awards. [d]

DUFFIELD, *Umpire:*

The Commissioners disagree as to the allowance of interest on the claims hereinafter mentioned, which have been referred to the umpire for decision.

The Commissioner for Germany is of the opinion that all claims should bear interest from their origin, while the Commissioner for Venezuela is of the opinion that no interest should be allowed except in cases arising upon contracts, and in such cases only from the date of the demand for payment of the claim, unless there is an express stipulation for interest in the contract. They also disagree as to the rate of interest, if any should be allowed.

Some phases only of the question are presented in the claims hereinafter mentioned, but as the question will necessarily come up for decision in all its phases during the progress of the Commission, it seems appropriate and convenient to determine the principles which shall govern.

The protocols provide:

Article III of the agreement of February 13, 1903:

That the Commission shall decide—

both whether the different claims are materially well founded and also upon their amount, [and in case of] injury to or a wrongful seizure of property * * * whether the injury to or the seizure of property were wrongful acts, and what amount of compensation is due.

Article V:

For the purpose of paying the claims * * * the Venezuelan Government shall remit to the representative of the Bank of England in Caracas, in monthly installments, beginning from March 1, 1903, 30 per cent of the customs revenues of La Guaira and Puerto Cabello. * * *

Article II of the agreement of May 7, 1903:

The decisions of the Commission shall be based upon absolute equity without regard to objections of a technical nature or of the provisions of local legislation.

These words of the protocols must be interpreted according to the law of nations, and not according to any municipal code. Mr. Webster said in a similar case: "When two nations speak to each other they use the language of nations."

---

[a] Page 10. [b] Page 425. [c] Page 665. [d] Pages 413, 658.

The importance of a correct decision has induced a careful examination of the subject, both in principle and upon precedents, which is the reason for the length of time that has been taken in the preparation of the opinion.

Primarily, interest was the sum due from a borrower to the lender for the use of a sum of money. In ancient times the strongest prejudice existed against its exaction, and as late as the reign of Edward VI an act of Parliament of Great Britain declared the "charging of interest a vice most odious and detestable, and contrary to the Word of God." This prejudice, however, has long since given way to the enlightened view that reasonable compensation for the use of money, like any other property, may justly be demanded.

Domat defines interest to be "the reparation or satisfaction which he who owes a sum of money is bound to make to his creditor for the damage which he does by not paying him the money that he owes him."

Pothier defines interest as including the loss which one has suffered and the gain that one has failed to make. The Roman law calls its two elements the "*lucrum cessans et damnum emergens.*" The pay of both is necessary to a complete indemnity.

The rule is thus stated in Rutherford's Institutes (Book 1, ch. 17, sec. 5):

> In estimating the damages which any one has sustained where such things as he has a perfect right to are unjustly taken from him or withholden or intercepted, we are to consider not only the value of the thing itself, but the value likewise of the fruits or profits that might have arisen from it. * * * So that it is properly a damage to be deprived of them as it is to be deprived of the thing itself.

The jurisprudence of all civilized nations now recognizes this principle as between individuals in case of contract, and has extended it to compensation for the taking of or injury to property. The general language of the civil law accords with the Anglo-Saxon common law in this respect, and the French civil code enacts the principle. (Sedgwick on Damages, 8th ed., sec. 697.) It is certainly a reasonable presumption from this uniform international recognition of this right as between individuals, that the nations would recognize its justice between themselves.

As applied to the case of reprisals, in which great caution is enjoined to keep within the strictest principles of justice, Mr. Wheaton says, in his work on International Law (Lawrence's ed.), page 363:

> If a nation has taken possession of what belongs to another, if it refuses to pay a debt, to repair an injury or to give adequate satisfaction for it, the latter may seize something belonging to the former and apply it to its own advantage till it obtains payment of what is due, *together with interest and damages.*

A report to the House of Representatives of the Forty-third Congress of the United States of America, second session (No. 134), published by authority of Congress in 1875, called "The Law of Claims Against Governments," contains an exhaustive discussion and examination of authorities on the question of interest on claims against governments. (See pp. 219 to 232.) Among other precedents there cited is the report of the Committee on Appropriations of the House of Representatives upon the question whether the United States of America should pay the sum due from it to the Choctaw Indians for lands ceded by them to the United States. The committee decided

the question in the affirmative. In support of its decision it cites as precedents the allowance of interest upon claims under the treaty of 1794 between the United States and Great Britain; the treaty of 1795 between the United States and Spain; the convention with Mexico of 1839; the same of 1848; the convention with Colombia of 1864; the convention with Venezuela of 1866; by the Mixed American and Mexican Commission; by the United States to the State of Massachusetts; the American-British Mixed Commission under the treaty of 1871; the United States in dealing with the Indians; the United States in 53 cases of private claimants cited.

The principle of this report was approved by the Senate of the United States in the adoption of the report of its committee containing the following language:

> Your committee have discussed this question with an anxious desire to come to such a conclusion in regard to it as would do no injustice to that Indian nation whose rights are involved here, nor to establish such a precedent as would be inconsistent with the practice or duty of the United States in such cases. Therefore your committee have considered it not only by the light of those principles of the public law—always in harmony with the highest demands of the most perfect justice—but also in the light of those numerous precedents which this Government, in its action in like cases, has furnished for our guidance. * * * Your committee can not believe that the United States are prepared to repudiate these principles, or to admit that, because their obligation is held by a weak and powerless Indian nation, it is any the less sacred or binding than if held by a nation able to enforce its payment and secure complete indemnity under it. (H. R. Report No. 134, 43d Cong., 2d sess., p. 230; Lawrence, Law of Claims.)

Other instances are:

Two Cargoes of Flour—interest allowed against the Republic of Venezuela (Moore's History and Digest, p. 3545); Ward's case (id., 3734); Rochereau's case (id. 3742); finally, the Geneva arbitration (Alabama Claims Commission), which, because of the gravity of the questions at issue, and the character, ability, and learning of its members, representing the United States, Great Britain, Italy, Switzerland, and Brazil, was justly regarded as the greatest the world has ever seen. In the great case before it, as in this case, the treaty was silent as to interest. The Commission, on account of the importance and gravity of the question, called for a special argument thereon, and by a decision of four to five allowed interest on the claims.

The umpire is therefore of the opinion that interest is allowable upon all claims arising upon contracts, and on all claims for wrongful seizure of or injury to property.

Claims for injuries to the person, however, stand upon a different footing. Damages in such cases are necessarily unliquidated and their exact amount can not be precisely ascertained. In such cases as between individuals interest is not usually allowed. (Sedgwick on Damages, 8th ed., sec. 320.) In the case of Lincoln *v.* Claflin, 7 Wall., 132, 139, the Supreme Court of the United States, speaking through Mr. Justice Field, said:

> Interest is not allowable as a matter of law, except in cases of contract or the unlawful detention of money. In cases of tort its allowance as damages rests in the discretion of the jury.

Under nearly all systems of jurisprudence the damages in claims of this nature are left to a jury to assess, instead of to a single judge, upon the accepted theory that because of their peculiar character the

united judgment of a number of men will more nearly approximate the exact compensatory amount than the judgment of a single mind. In many courts, and in all the courts with the practice of which the umpire is familiar, it is not the practice for the plaintiff to ask or the jury to assess interest per se. Doubtless the latter may and often do consider the lapse of time between the injury and the recovery of damages therefor in arriving at the amount of their verdict, but they do not specially compute or allow it eo nomine. The same course is open to the Commissioners and to umpire, and in their wise exercise of their discretion, in cases of this character, no practical injustice need be done in any case.

In the opinion of the umpire, therefore, *no interest should be allowed, as such, upon claims for purely personal injuries*, not involving the seizure of or injury to property.

The Commissioners further disagree upon the questions from what time interest shall accrue and the rate to be allowed. It is the opinion of the Commissioner for Germany that interest should begin to run from the date of breach of contract, or date of wrongful seizure of or injury to property, but the Commissioner for Venezuela is of the contrary opinion except in cases of claims based upon contracts expressly stipulating for interest. In all cases he maintains that no interest is to be allowed until a proper demand for payment has been made on the Republic of Venezuela.

There is much force in the argument of the Commissioner for Germany that the government, as a principal, is presumed in law to have knowledge of all the acts of its officers, as its agents, and if the case was one between private parties it would be difficult to avoid the conclusions drawn by him. The umpire is of the opinion, however, that as to claims against governments it would be unjust to enforce so strict a rule of agency. Of necessity a national government must act through numerous officials, many of whom are very subordinate and quite remote from the seat of government. In the ordinary course of business a creditor under a contract, or a party injured by a tort, presents his claim to the central powers of the government and asks satisfaction thereof from some official whose special function it is to represent the government *in the premises*. It is generally presumed that governments are ready and willing to pay all just claims against them. This is a corollary to that other presumption of law which is of universal application—omnia rite acta præsumuntur. If such is the case in respect of individuals it must certainly be true in respect of governments. The umpire is not prepared to go the full length of the argument of the Commissioner for Venezuela as to the formality necessary to constitute a sufficient demand in all cases, but he is of the opinion that some evidence of a demand upon the government for payment of a claim is necessary to start the running of interest in all cases which the Government of Venezuela has not either stipulated for interest or given an obligation from which an agreement to pay interest can fairly be implied. The sufficiency of the demand is to be decided according to the particular facts in each case.

The umpire is of the opinion that where no rate of interest is fixed by the terms of the contract interest should be computed at 3 per cent per annnm in all cases, that being the rate fixed by the statute of Venezuela in like cases. It is not inconsistent with the language of

the protocol to refer to the law of Venezuela fixing that rate. All foreigners residing in or doing business with a country are equally bound with its citizens to know the laws of the country. When they determine to reside in or do business in that country they should be and are prepared to accept the commercial laws of the country. Such general laws are not, in the opinion of the umpire, local legislation, within the meaning of the protocols. Certainly in a suit between a foreigner and a Venezuelan citizen arising upon a contract which is silent as to the rate of interest, the former could only recover against the latter the rate of interest prescribed by the law of Venezuela. There is no good reason for any different rule when the claim of the foreigner is against the Government.

The umpire agrees with the suggestion of the Commissioner for Germany that in all cases in which interest is allowed it should be computed up to a common date. While the precise date when the labors of the Commission will actually terminate can not now be certainly determined, in the opinion of the umpire substantial justice will be done by computing interest upon all claims up to and including December 31, 1903. In each case the amount of interest up to that date will be added to the principal sum, and an award made for the aggregate amount in gross.

Shall these awards bear interest? In the opinion of the Commissioner for Germany the arguments for such allowance, upon grounds of equity and justice to the claimants, are strongly put. On the other hand, the Commissioner for Venezuela presents with ability the equitable considerations in favor of the Government of Venezuela, and insists that the Commission is without the power so to do. It must be conceded that the Commission can not exceed the powers conferred upon it by the high contracting parties, either expressly or by necessary implication. The Supreme Court of the United States so held in the recent case of Colombia *v.* The Cauca Company, decided May 18, 1903,[a] and reduced the award of the Commission in that case some $160,000. It is material to remember, in considering this question, that while the amounts are for the ultimate benefit of the claimants, they are to be included in an aggregate sum of money to be paid by the Government of Venezuela to the Government of Germany. These two nations have stipulated, in the language quoted above, how this amount shall be paid, and partial payments have been already made and will continue to be made monthly. There is no express provision for interest in the stipulation. Is there any necessary implication to that effect? It is argued by the Commissioner for Germany that the agreement on the part of Germany to accept payment in subsequent accruing installments necessarily implies an understanding that the awards should bear interest, while the Commissioner for Venezuela insists that in making so particular a provision for the manner of payment the omission of any mention of interest is significant and decisive that no interest was intended to be allowed on the sum. It does not appear in the evidence whether the Bank of England is to pay interest on the successive payments of the customs receipts or not, and in the opinion of the umpire *it is immaterial.* If the bank does pay interest on these deposits it will increase the amount received by the Govern-

[a] 190 U. S., p. 524.

ment of Germany for the benefit of its claimants. If it does not the Government of Venezuela still has paid and will continue to pay monthly installments in the manner and to the trustees named by the contracting Governments. It must be conceded that Venezuela can not under these circumstances be asked to pay interest on the full amount allowed without having credit for interest on these monthly partial payments. There is no provision made for a future settlement of these charges and credits of interest. No person is designated to compute the same or to settle any difference in the computation of the two Governments. The Chinese Indemnity Fund Commission of 1858 is a case directly in point. The treaty provided for the payment of the fund out of the Chinese customs receipts, as is the case here, but the Commission allowed no interest on awards. (Moore, p. 4627–4629.)

It is by no means settled that in cases where the convention fails to specifically provide for interest there is any power in the arbitrators to allow interest on awards. Referring to the decision of former arbitration commissions, the weight of precedent appears to be against the allowance. As opposed to the precedents cited by the Commissioner for Germany, in the following cases the awards did not carry interest: The Panama Riot Commission; the Mexican Claims Commission; the French Claims Commission of January 15, 1880; the French-American Claims Commission; the case of the Montijo; Ward's case; finally, in the Geneva arbitration of 1871 (Alabama Claims Commission), above referred to, no interest was allowed upon awards.

The umpire is influenced by these considerations to decide that it was not the intention of the high contracting parties that the Commission should allow interest on awards.

It only remains to apply these conclusions to the particular cases referred to the umpire.

The case of Becker & Co. is founded upon an order given in payment of certain blankets, in the following words:

CARACAS, *July 1, 1892* (29° and 34°).

To the Citizen Administrator of Municipal Rents:

To be charged to the expenses of war, according to the authorization of the President of the Republic, please pay to Messrs. O. Becker & Co., successors, the sum of 1,470 bolivars, the value of certain blankets taken by this office for the expeditionary army.

God and the federation.

PEDRO VICENTE MIJARES.

There is no evidence of any demand for the payment of this order. Treating it as a draft, certainly a presentment and demand for acceptance is essential before interest will commence to run. Apart from the requirements of the civil law, in which the argument of the Commissioner for Venezuela finds considerable support, the umpire is of the opinion that according to the principles of commercial law the instrument would draw interest only from the date of demand for payment. It was decided by the Supreme Court of the United States that the presentment for payment of a drainage warrant, substantially similar to the order in this case, issued by the city of New Orleans,

was necessary to start the running of interest. (New Orleans *v.* Warner, 176 United States Reports, p. 92.)[a]

In view of the full consideration given by the claimant for the order so many years ago, it would not be equitable to decide against any allowance of interest prior to the presentation of the claim to this Commission. The claimant will, therefore, be allowed a reasonable time to prove a demand for payment, so that interest may be computed from that date. The same course will be taken in the case of A. Daumen.

In the case of Christern & Co. simple interest at the rate of 3 per cent per annum will be allowed upon the sums hereafter found due by the Commissioners and the umpire from the dates of demand for payment of the several amounts, and a reasonable time will be allowed to prove such date.

The cases of Fishbach, Friedericy, and Kummerow are not yet ready for a decision on the merits. The umpire is waiting for further briefs from the Commissioners. In case of their allowance they will be governed as to interest by the conclusions reached in this case, so far as they may be applicable.

KUMMEROW, OTTO REDLER & CO., FULDA, FISCHBACH, AND FRIEDERICY CASES.[b]

(By the Umpire:)

The Government of Venezuela is liable, under her admissions in the protocol, for all claims for injuries to or wrongful seizures of property by revolutionists resulting from the recent civil war.

Such admission does not extend to injuries to or wrongful seizures of property at any other times or under any other conditions.

Such admission does not include injuries to the person.

As to these two last classes of claims her liability must be determined by general principles of international law, under which she is not liable, because the present civil war, from its outset, has gone beyond the control of the titular government.[c]

[KUMMEROW CASE.]

GOETSCH, *Commissioner:*

By the sworn declarations of the witnesses, Páez, Ojada, and Infante, it is proved that in the months of May, June, and July, 1902, the objects specified in the claim and valued at 3,200 bolivars were taken from the claimant by revolutionary troops at his ranch "Mañongo." The witnesses worked and slept in the place where the events occurred, and

---

[a] Under the provisions of an act of Congress, the United States courts administer, in cases at law, the practice of the several States in which they sit. In the State of Louisiana the civil law obtains. (Note by the umpire.)

[b] The Commissioners for Germany and Venezuela both filed opinions in these cases separately, the umpire rendering his opinion in the cases as grouped. The cases of Henry Schussler, Carl Mohle (see p. 574), Gotz & Lange, E. Nicolai, Adolph Ermen, Paul Flothow, and Hugo Valentiner (see p. 562) were also allowed by the umpire for the reasons set forth in the following opinion, the Venezuelan Commissioner holding as in these cases that the Venezuelan Government was not liable for revolutionary damages.

[c] Headnotes by the umpire.

were present at the act of confiscation. They state expressly that the authors were troops of *the "Libertadora" revolution* under the immediate orders of Generals Boggier, Bonito Estraño, Raimundo Tejado, and of the official Felipe Colmenares. The supposition that the authors of the confiscation were marauding robbers or highwaymen without any leader is therefore inadmissible. The nature of the objects taken shows that they were destined for revolutionary purposes—that is to say, to carry on war (beasts of burden, rifles, cartridges, field glasses, blankets, and clothing).

The third article of the protocol of February 13, 1903, is of the following tenor:

> The Venezuelan Government admit their liability in cases where the claim is for injury to, or a wrongful seizure of, property, and consequently the Commission will not have to decide the question of liability, but only whether the injury to, or seizure of, property were wrongful acts, and what amount of compensation is due.

By these clauses it has been agreed by contract between the German and Venezuelan Governments that Venezuela makes itself liable for the property of German subjects illegally confiscated by authorities or troops of the Government or authorities or troops of the revolution. If the Government of Venezuela were not liable for the damage caused by the revolution, this ought to have been expressly mentioned in Article III, which otherwise would have no meaning. I mention, moreover, Article I of the protocol by which the Government of Venezuela recognizes the German claims in principle, and therefore, also, the claims for the confiscation of property on the part of revolutionists. Although it is not shown by the proofs, it is nevertheless possible that small bands confiscated the German property in question. The mode of carrying on war here, the difficulty of obtaining resources, the desire to commence depredations, generally obliges the troops of the country to separate into small divisions whereby they do not lose their character of revolutionists, for whose illegal acts the Government of Venezuela is liable in accordance with the protocol. If, in Venezuela, these small detachments are known by the name of guerrillas, the Government will be liable for the damages of guerrillas, since "guerrilla" means nothing else but war on a small scale. The removal of liability of the Government of Venezuela could only be brought into question in treating of personal crimes of rebels or highwaymen, and this is not the case, as is shown by proofs.

Article III of the protocol, which governs the Commission, does not create a new right which is burdensome to Venezuela or in contradiction to the law of nations.

The law of nations recognizes, moreover, that those States in which revolutions are frequent, and whose governments are therefore subject to frequent changes, are liable for the acts of revolutionists, provided that the revolutionists are, because of the means at their command, the government de facto, so far as the one against which they are exercising their forces is concerned. This liability has been more than once recognized by the judgments of international commissions. Thus the Government of the United States of America has claimed damages and injuries from the Government of Venezuela because of the seizure of American vessels *by Venezuelan revolutionists*, and these have been allowed by a commission. (See Moore, History and Digest

of International Arbitrations to which the United States has been a party, Washington, 1898, pp. 1693–1732; see especially pp. 1716–1722–1724.) Thus also the Government of the United States of America demanded an indemnity from the Government of Peru for the robbery committed against an American, Dr. Charles Easton, by a "body of partisans of the rebel chieftan seeking to overthrow the Government," and demanded that the Commission allow it, inclusive of interest at 6 per cent. (History and Digest, pp. 1629–1630.) This case is in every sense analogous to the present case of Kummerow. (See, moreover, Panama riot and other claims, Moore, p. 1631; case of Montijo, seizure of an American vessel by Colombian revolutionists, Moore, p. 1421, where the following opinion of the umpire is found: "But there is another and a stronger reason for such liability—this is, that the Genal Government * * * failed in its duty to extend to citizens of the United States the protection which, both by the law of nations and the stipulation of said treaty, it was bound to do. The first duty of every government is to make itself respected both at home and abroad. * * * If it does not do so, even by no fault of its own, it must make the only amends in its power, viz, compensate the sufferer.")

It is, therefore, beyond doubt that the Government of Venezuela is liable for the damages occasioned by revolutionists, not only by virtue of the precise terms of the protocol, but also by the law of nations, and above all by the decisions of international commissions of arbitration.

Incidentally it may be mentioned that in Germany such liability, by virtue of which a community (the city or the rural district) ought to indemnify the person who has been injured by revolt or riot, has been sanctioned by law.

The present case is analogous to the claim of Christern in Maracaibo (sackage of "El Finglado" by revolutionary troops at the command of Generals Marquez and Zuleta). According to the minutes of the fourth session, the honorable Venezuelan Commissioner has recognized in principle in this case the liability for damage occasioned by revolutionists, and it only remains for the honorable umpire to determine the amount of damage. The recognition has taken place in view of the provisions of the protocol. In the present case it will not be for the Commission to deliberate upon the liability of the Government of Venezuela. It has been materially settled by international law and formally settled by the protocol. The Commission ought preferably to decide upon the illegality of the confiscation and upon the amount of the corresponding indemnity. The illegality of this seizure is fully proved by the testimony of the witnesses, and with respect to the prices fixed for the objects taken, these appear acceptable and no objection has been made by the Venezuelan Commissioner in this respect. The costs of judicial proceedings (200 bolivars), paid by the claimant are a direct injury which the latter has received, and its return seems justified. (Art. 2 of the supplemental convention.) With respect to the interest, reference is made to the opinion contained in the claim of Christern.

The German Commissioner asks that the honorable umpire decide the admissibility of the claim, amounting to 3,200 bolivars, with interest at 6 per cent, beginning from August 1, 1902, until the complete extinguishment of the debt.

ZULOAGA, *Commissioner:*

In this claim of Kummerow, in my opinion, the facts are not proven, nor do I believe that the foundation upon which he bases it justifies the claim. The claim is founded upon the testimony of three witnesses, laborers of the claimant, of such an ignorant class that they do not even know how to sign their names. The declarations are dictated in a common formula, and the estimate which they make of the value of the objects stolen proves by its uniformity that it proceeded from orders received, because of the circumstance that it is to be supposed on account of the class of work which they did they could not testify as to the existence in the possession of Kummerow of many of the objects which he says were stolen from him, nor of their value as expert valuers. To the foregoing is added the consideration that they omit all elements of time and other circumstances, which might serve to throw light upon the facts which they alleged. They say that the acts were performed during a period running over three months. It does not appear that any violence was employed, nor that the objects, if there were any, were cared for, nor even that they were taken without the consent of their owner. Mr. Kummerow appears to have considered that the State is a sort of surety who pays with increase for every injury that he might suffer. To all this is added the consideration against the claim that the acts were performed by revolutionary bands, as he states. The very character of the acts which are relied upon, if they were committed, and it is of no importance to the case that the robber was called General This or That, since in Venezuela the name "general" in common speech is given in internal disturbances to every one who follows, of his own will, the rebellion against the constitutional authority. These detachments in general do not obey any central political chief, and only accident or circumstances make them join in an army, thus putting an end to the arbitrary proceedings. In the present war the revolutionists have shot down some of these ringleaders. For my part it is necessary to prove that these roving detachments constituted, properly speaking, the forces of the revolution, and if the claimant believes that this justifies his claim he ought to prove it fully.

But there is a further consideration. Since the German Commissioner believes the liability of the Government to be established by virtue of article III of the protocol, I ought to make an explanation concerning my way of understanding it. I confess that my first impression upon reading it was one of extreme uncertainty; but a more careful study of the subject convinced me that it can not in any way be contended that the Government is liable for every wrong committed against Germany.

It is not creditable that Germany seeks to impose on Venezuela rules which she does not consider just, and it is not possible that in order to apply exceptional rules in favor of Germany a mixed commission should be formed whose president and umpire has been named by the President of the United States. These ideas by themselves plainly show that article 3 of the protocol contains nothing distinct from the rules which in general these nations recognize upon this subject, but only a confirmation of those principles with the idea at most

of going counter to the doctrine of absolute nonliability of governments in the matter of civil wars sustained by many governments and publicists. If any doubt might exist it would suffice to know that Venezuela is paying to-day the claims of all the powers with 30 per cent of the receipts of two of her custom-houses, and this supposes that the nationals of all of them should be treated in the same manner and not with the inexplicable and unjust difference in favor of Germany. The Commissioner of Germany also quotes in support of his opinion article 1 of the protocol, which says that Venezuela recognizes in principle the justice of the claims of German subjects presented by the Imperial German Government; but it is to be borne in mind that that article refers to the claims already presented, which are those which article 2 of the protocol treats of—claims which the Government of Venezuela maintains in general were completely unjustified. This article which the German Commissioner relies upon has not, in my opinion, so far as Venezuela is concerned, any other meaning than the necessity to put an end to a state of war. To seek to find in it a pretext for supporting the new claims is to make the work of this Commission useless; it is to make the legation of Germany the exclusive judge of the justice of the claims.

These preliminary considerations having been established, I must seek in accordance with these ideas the principles which, according to international law, must serve to establish the liability of governments in cases of injury; and in order to do this it suffices to set forth those which Germany and the United States profess. Those of Germany appear from a treaty celebrated with Colombia, article 20 of which says:

> It is also stipulated between the two contracting parties that the German Government will not seek to make the Colombian Government liable, *except there might be fault or want of diligence* of the Colombian authorities or of its agents for the damages, insults, or confiscations occasioned during the time of insurrection or civil war to German subjects in the territory of Colombia on the part of rebels or caused by the savage tribes outside the pale of the authority of the Government.

Those accepted by the United States appear in a note of the Department of State to the minister of the United States in Lima. In this note it is said:

> In respect to the latter it is the doctrine of this Department that the Government can not be held to a strict accountability for losses inflicted by such violence. (In speaking of the liability of the Government for acts of insurgents whom it could not control and for the violence of mobs.)

This note relates to the destruction of a Peruvian ship in Chesapeake Bay.

> The position the United States took on that subject was that such destruction having been effected by a sudden attack of insurgents, which could not by due diligence have been averted, the Government of the United States was not bound to make indemnity. (For. Rel. U. S. 1888, pp. 1377, 1378.)

The Commissioner of Germany has set up as a precedent in the case of the *Transportation Company*, but it is to be remarked that in it there are many other complex elements which might have been the efficient cause for the decision, since this is not set down as one of them. Venezuela was charged with negligence in punishing the guilty parties; there was a question of constitutionality and unconstitutionality and the failure to perform contracts made by Congress; they were not

residents of the country; they were traveling about in a ship under the flag of the United States, etc. This decision which is cited I believe in no way establishes the principles sought to be maintained, and everything depends upon the appreciation that the judges might make of the facts alleged.

I consider that the protocol can not be interpreted except in accordance with what has already been set forth, and bearing that in mind I am of opinion that the claim of Kummerow ought to be rejected, it being well understood that I also consider that the damage and much less the fault of the Government of Venezuela is not proved.

The circumstances oblige me to make a general statement of the principles, although it may be that the umpire will not think it necessary to consider all of them in the case of Kummerow.

GOETSCH, *Commissioner* (second opinion).

The opinion of the Venezuelan Commissioner in this claim imposes the duty upon me of supplementing my opinion in various ways.

I. Now that the Venezuelan Commissioner seeks to deny, in the present case, the liability of the Government, founding his opinion upon the fact that the authors of the damage were *guerrillas*, it is necessary to make reference to two annexed official telegrams.[a]

---

[a] [Official bulletin of the State of Aragua, December 9, 1902. National telegraph from Miraflores to La Victoria.]

DECEMBER 9, 1902—6.40 p. m.

For the PRESIDENT OF THE STATE:

In the most felonious and unjust manner the German and English ships of war have committed the most unusual assault likely to be recorded in history in the port of La Guaira, having captured, without previous notice of war, the steamers *Crespo*, *Ossun*, *Totumo*, and *Margarita*. Therefore, if the same thing should take place in that port, proceed so as to be able to prepare yourself immediately to repel force with force, holding myself responsible to all of you, together with your companions, that the national honor shall remain unsullied in every case. Also you shall proceed to take prisoners all the Germans and Englishmen who may be there, *without any exception, in order that if the foreign rapacity should be directed against you they shall be the first to be fired upon.*

Thus also you will take possession of all their properties.

Acknowledge receipt and fulfillment.

CIPRIANO CASTRO.

[National telegraph from La Victoria to Caracas.]

DECEMBER 9, 1902.

For Gen. CIPRIANO CASTRO, *Caracas:*

The constitutional President of the State, impressed by the contents of your telegram in which you announced the great assault committed to-day in the port of La Guaira against the national sovereignty by English and German men-of-war, has sent me notice by telegram to notify you that in any case the State of Aragua will show itself equal to its great duties in this new and tremendous test to which the destiny of our beloved Venezuela is subjected.

The Araguan people *en masse*, and as soon as they had notice of the nefarious occurrence, hastened to protest with strong words of devout patriotism against the foreigners who thus trample upon the principles of international law, proclaimed and observed by all the civilized nations of the globe. Likewise the Chief Executive charges me to say to you that he and his companions pledge themselves to you that the national honor will remain unsullied in any case, since they will follow you steadfastly along this line until they show not only to those who spurn our inalienable prerogatives as citizens of a free and independent nation, but also to the entire world,

It will be seen from these that in Venezuela this term is also in current use in the language to designate small bodies of the revolutionary army armed and in the field against the Government. The reasons already set forth in the first opinion fix the responsibility of the Government for the actions of these, unless the responsibility of the Government of Venezuela for damages by revolutions be excluded in principle.

II. Until now the Commissioner of Venezuela has not disputed this responsibility. Like his colleague, Doctor Paúl, a member of the French-Venezuelan Commission, he has recognized until now the responsibility of his Government for revolutionary acts. It so appears in the minutes of the fourth session in the conference concerning the claim of Christern, to which reference is now made; likewise in the conference concerning the claim of Ermen. He has been guided by this interpretation, as appears in the minutes, and his argument in that claim before the honorable umpire. It was there always maintained that in the case mentioned the responsibility of Venezuela should be denied because there was question of guerrillas and not of the regular troops of the revolution. Otherwise the supplemental proof of Mr. Ermen, agreed to by the parties, would be without reason. It is recently that the honorable Commissioner of Venezuela has modified his opinion. It is seldom that in a diplomatic international commission a question of international law already recognized and approved in principle should be disputed later. In the interest of uniformity of judgment of the Commission, it appears desirable that the question of law should not be determined in one way to-day and in another to-morrow.

In any case this change of judicial opinion of his Venezuelan colleague imposes upon the German Commissioner the special duty of showing the honorable umpire, in case he may deem this change of opinion allowable, that the first interpretation of the honorable Venezuelan Commissioner is the just one, and the one which corresponds to the tenor of the protocol and to the principles of international law, without any possible error.

III. The Commissioner of Venezuela asserts that Germany pursues special measures in demanding indemnity for its subjects for damages occassioned by the revolution. Such insinuations should be contradicted. The honorable Commissioner of Venezuela should not be

---

that we are the worthy descendants of the forefathers who instituted and crowned with success the great national emancipation.

Your positive orders concerning the most important affair to which this telegram relates have been communicated to all the districts of the State.

FRANCISCO E. RÁNGEL.

[Circular telegram.]

LA VICTORIA, *December 9, 1902.*

To the Civil Chiefs of the State:

Immediately after receiving this telegram—that is to say, without losing even a single moment—you shall proceed to place under arrest all the Germans and Englishmen who may be domiciled in each and every one of the municipalities which compose the district under your command. *You shall likewise proceed to take possession of the properties which belong to the above-mentioned German and English subjects.*

In order that you may understand the rapid and efficacious way in which you ought to fulfill this order, let it be sufficient for you to know that it has been communicated directly from the worthy President of the Republic, General Castro, as a reprisal of the grave assault committed to-day against the national sovereignty in the port of La Guaira by ships of Germany and England.

God and federation.

FRANCISCO E. RÁNGEL.

ignorant of the fact that the third articles of the German, English, and Italian conventions with Venezuela contain the same provisions, and that France has also demanded revolutionary damages before the Commission.

In the French Commission the question has already been decided in favor of France, wherefore, as is stated, the Venezuelan Commissioner, and later the umpire of the Commission, have recognized in principle the liability of the Venezuelan Government in all cases. In my first opinion I have expressly shown that the Government of the United States of America has also collected these damages and that it has been allowed them by commissions of arbitration, not only with respect to Venezuela, but also with respect to many other South American States. In Germany itself there exists the same liability legally sanctioned.

To the reference which the honorable Commissioner of Venezuela makes to the German-Colombian treaty, it ought to be objected that the form which they care to give to their respective mutual relations, and if they desire to restrict certain international rules with respect to their citizens, is a matter of policy as between Germany and Colombia. No such treaty exists between Germany and Venezuela. Venezuela can not deduce for herself rights from the German-Colombian treaty, all the less since Colombia has made concessions to Germany in order to obtain the concession noted. The protocol, and in its absence the law of nations, ought to serve as a rule for Venezuela and for the Commission. And to the citation which the Commissioner of Venezuela makes, referring to the United States, in the case of the destruction of a Peruvian vessel in Chesapeake Bay, answer must be made that this case is not sufficient to alter the opinion of the German Commissioner. In the first place, it is known that the matter was afterwards adjusted through diplomatic channels and that Peru was indemnified. (See Moore, History and Digest, p. 1624.) The Mixed Commission which met in Lima only decided that it had no jurisdiction over the claim, and refrained from making an award upon its merits. Apart from this no analogy can be deduced from this case with the United States of America. These States are a powerful, flourishing nation, where order rules, the direction of which is intrusted to a strong hand and affords to foreigners and their interests the most absolute security, as the enormous amount of immigration proves, and where, from every point of view, revolutions like those which in Venezuela are the order of the day are impossible. Under these circumstances the case cited by the Venezuelan Commissioner has no other character than that of a commission of a common crime which the authorities of the United States could not foresee, and on account of which, therefore, liability did not attach to the Government. This is not so in Venezuela. One revolution is substituted for another. Revolution has been made a matter of politics. The confiscation of and damage to property of foreigners are here simply the means for the support of revolutions, and have as an object to bring these to a favorable end, although ordinarily they are only dedicated to the enrichment of a few revolutionary partisans.

Moreover, according to press notices of a recent date, the Government of the United States of America paid an indemnity to Italy for the lynching of Italian subjects.

Besides, the following reasons exist to sustain the responsibility of the Venezuelan nation as such:

(*a*) It has forbidden foreigners to mix in political affairs. This has been decreed anew in Venezuela by the law governing foreigners. If they take part in a revolutionary movement they must suffer severe penalties, and they may even be expelled. They are incapacitated—not so the Venezuelans—from defending their property against losses by force of arms or by their adoption of one of the parties. As a compensation for this the Government of Venezuela is under obligation to protect foreigners. If it does not do so, or if it is impossible for it to do so, there is nothing more just and equitable than to indemnify the person for the losses suffered.

(*b*) The confiscation of foreign property by revolutionists has as a consequence the enrichment of the national wealth of Venezuela at the cost of foreign property. The money, the cattle, the thing taken ought to accumulate somewhere. If the revolutionists surrender, if a reconciliation with the party in power is effected, as usually happens, a general amnesty is decreed, as, for example, in the recent case of the "Hernandistas." Frequently it happens that revolutionary leaders surrender themselves to the Government and place their troops at the disposition of the latter against the revolution. In this case it never occurs to anyone to return the moneys, merchandise, or objects seized in support of the revolution to their rightful owner, nor does the Government take any proper means to return to foreigners their property or to cooperate in its return. It is therefore an obligation of the nation, founded upon the principles of equity, to make reparation to foreigners.

(*c*) But the real reason is the following: If the Commission denies the liability of the Government of Venezuela, all the foreign residents in Venezuela will be exposed to the mercy of future revolutionists. The decision in international law, of the Commission which denies the liability of the nation, would have in the future, as a consequence, a complete want of consideration for foreigners. The admissibility of enriching themselves at the cost of foreigners would be converted into a policy for the revolutions to come. The Commission would assume a grave responsibility in the eyes of history if it should determine to deny the liability of the Government for damages occasioned by revolutionists.

IV. The Venezuelan Commissioner is of opinion that according to international law, especially in accordance with the opinions of many jurists, professors on the subject, the liability of the Government for damages arising out of civil wars can not be established. Only conditionally and in special cases is this true. The difference rather ought to be established whether or not, in a civil war, the factions enjoy the rights of belligerents (as, for example, in the war in the United States between the North and South). In the first case the damages would fall upon everyone as "casualties of war." (See Moore, pp. 1716, 1718.) In the second case the liability of those states in which revolutions are frequent, as has been shown in the first opinion, is considered as obligatory. In the present case the liability is necessarily established by the circumstance that the actual revolution has not been recognized as a belligerent party by any of the powers.

V. The honorable umpire saw fit at the session of the 22d of the present month to ask a juridic declaration of the Commission, as

explicit as possible, concerning the interpretation which article I of the protocol should receive. The declaration there contained by which the Government of Venezuela recognizes in principle the claims presented by the German Government refers, according to the opinion of the German Commissioner, to the claims contained in the ultimatum of the German Government, and published by the Government of Venezuela in its Yellow Book. Article I has been supplemented by article III. There the recognition in principle has been limited, in so far as it pertains to the facilities of the German-Venezuelan Commission, to decide also the material justice of the claims submitted to its jurisdiction. This right of the Commission to decide upon the material part of the claim is in its turn limited by the following paragraph, according to which the Government of Venezuela recognizes in principle its liability in the case of claims for illegal damages to and confiscation of property. It would be superfluous to establish this interpretation; moreover, it would be a pleonasm (a redundancy) if it had to be interpreted in the sense that the Government of Venezuela is liable for that which the *Government itself* had confiscated or illegally damaged. The extent of that liability is understood, and it does not require the solemn declaration of a treaty of peace to fix it.

The only object of this clause has been to assist the Commission placing beyond discussion and dispute by the Commission the liability even for damages of the revolution; a liability maintained in principle by the German Government, and up to now always disputed in principle by the Government of Venezuela.

Otherwise the provision would have no meaning. As for the rest, in the opinion it has already been thoroughly demonstrated, that it is the object of article III to give a conventional form to an international rule, disputed until now by Venezuela.

ZULOAGA, *Commissioner* (second opinion):

It is not true that I deny in principle that which has been admitted before. In the Christern case no question of law nor of fact was discussed, and the German Commissioner can not properly assert on account of any declaration of mine what the reasons were that induced me to allow it. I believe that it is useless to insist upon this disagreeable matter.

I have attempted, inspired in a large degree by the same idea which later the umpire has expressed in the Ermen case—that cases in the relation to revolutionary matters may be very different—not to treat of this the question except in so far as the case necessitates it.

In the Ermen case it appears to me that the question of liability for revolutionary damage is unimportant, since, from the way Ermen states that the act was committed, it is seen that there is question of a common fault which never involves the liability of the Government, be those who have committed the act who they may, to which is added the fact that Ermen himself could not say that they were revolutionists.

In the case of Kummerow I am inclined to believe the same, since in my judgment it is sufficient to notice that neither the acts are proved nor the violence shown. To reject these claims for those reasons does not mean to say that I do not reject them also for other reasons or because Venezuela is not liable in international law for the acts of *guerrillas* because of which claim is made.

The question with respect to guerrillas is in my opinion simple. The guerrillas may in reality belong to the revolutionary army, but they may also not belong to it, and, in general, they do not belong to it, and under this name bands of robbers are shielded who take advantage of the disturbed political situation of the country and make depredations, and in this case the liability of the Government would be as much involved as that of the German or English Governments would be for the acts of the highwaymen of Berlin or London or that of the Government of the United States for the acts of those who stop and rob the trains in the middle of the plains.

In a vast, unpopulated country like Venezuela the question of getting rid of *guerrillas* in certain cases is a different problem, because of the immensity of the forests and plains where they hide themselves. With respect to this, it is worth while to recollect an interesting incident of our history. The war of independence having been terminated, certain marauding bands of guerrillas continued in existence, and among them a band by the name of "Cisneros;" in vain it was pursued; it always escaped. In this state of affairs the President of the Republic, General Páez, resolved to go in person, and an interview was proposed in a forest. Cisneros answered that he would be alone in his den, and Páez went; there the bandit had everything ready to shoot him and drew up his forces and said to Páez that *he* (Páez) should give the order to *fire;* the extreme calmness of Paez saved him, and the bandit submitted himself to the authority of the Government.

In order that the revolutionary question might arise it would be necessary that the claimant should have proof (since it is a principle of law that the burden of proof rests upon the one who sets up the fact) that these *guerrillas* were regular forces of the revolution, as the German Commissioner himself desired that Ermen should prove. But regular forces are only those who are subject to the orders of the chiefs of the revolutionary movement. When this fact has been proven, then in reality the question arises whether the Government is or is not liable for acts of revolutionists, and until then it seems to me that we are within the domain of common law and of ordinary punishment.

The principle of the liability of the state with respect to damages is, in the opinion of the authors (see Pradier-Fodéré), within the rule of common law that everyone is liable for his acts and those of his subordinates. But as the juridic organization of the state is complex and its acts must be governed by many political economic relations, etc., this principle must be restricted with respect to it. In Venezuela, for example, article 9, law of 1873 (Seijas, vol. 1, p. 57) says—

> That it can not be contended that the nation should make indemnity for damages and injuries or confiscations which have not been committed by legitimate authorities *acting in their public capacity.*

The Government is therefore not liable unless it be proved that the authorities committed the injury acting in their public capacity. (See art. 11 of the decree of June 9, 1893, Official Compilation, vol. 16, p. 544.)

The protocol of February appears to have wished to abolish just this distinction, and thereby violence committed by the forces of the Government, which took advantage of their position, it appears to me, involve the liability of the Government.

In the question of a revolution it appears that, according to these same principles, the government is not and can not be liable for acts which are not its own but those of persons occasionally outside the pale of its authority. The rule, therefore, is the nonliability of the government. (See Seijas, vol. 1, p. 50.) This liability may in law be established according to the doctrines of some countries if it is shown that the state is negligent or blamable in a concrete case for not having furnished timely protection. But this is an exception, by virtue of which in judging the case only the negligence or culpability charged can be considered.

The German Commissioner is of opinion that the protocol of Washington has derogated these principles of the law of nations with respect to Venezuela, but such a thing does not appear. If it had been intended to make such a declaration of exception it would have been essential to state it clearly, and it is a fundamental principle of interpretation that the clauses making exceptions should be interpreted *restrictively*. Besides, article III of the treaty provides that the Commission must decide if the damage or seizure were unjust, and, in accordance with the principles of international law, it can not be said that the acts of the rebels were just or unjust. This is said of the acts of governments.

With respect to persons who are not the legitimate authorities there exists in Venezuela the right of direct action against them for the damages caused, as also for crimes committed—an action which those who have been injured may institute by appearing before the civil or criminal judge, according as the fact is or the relief which the claimant seeks. Article 11 of the law of 1873 says:

> Everyone who, having no public capacity, may decree contributions or forced loans, or commit acts of spoliation of whatever nature, as well as those who execute them, shall be liable, directly and personally with their property, to the injured person. (See Seijas, vol. 1, p. 57.)

The executive power is not to intervene in this proceeding and would only be liable if they demanded justice before the judge which should have been impossible for a person to obtain on account of fraud, that is to say, the *denial of justice*. The law of Venezuela in these matters has its importance, since it is a principle of international law, as I understand, that the foreigner has no greater right than which is granted to nationals, and it is worthy of note that Venezuela does not concede to Venezuelans the right to indemnity for damages committed by the revolution.

The Commissioner of Germany states that Germany is making no special contention, according to the interpretation which he gives to the protocol and the protocols of England and Italy; but I object, for it does not appear that those protocols were interpreted in the manner which he alleges. And nothing appears in the convention of France, and, as that of Paris, payment is to be made in diplomatic debt, not in gold, and there are other reasons or special advantages for Venezuela. The Venezuelan Commissioner might have had sufficient reasons for judging and determining in a different manner, if he did so (which I do not know); or rather to present the questions and their proceedings in other forms. With respect to the United States, I do not know that demands are made on Venezuela such as the demand of the Commissioner of Germany, and I believe that there will not be any such, bearing in mind the doctrine professed by that country. And

since the United States and Spain, as well as other nations, share in the division of the 30 per cent pro rata, I do not understand how one nation can ask more than other nations, since the nations that did not join in the blockade did not insert the third clause, which, interpreted in the form the German Commissioner desires, would be a cause of preference. I consider that they did not believe that this article had such a meaning.

The German Commissioner then enters into considerations of a political nature with reference to Venezuela in order to justify his doctrine. These considerations are so devoid of international equity and contain such strong statements against my country that I prefer to abstain from answering them as they deserve, leaving them to the consideration of the umpire and making only a few concise remarks. If the Commission decides in accordance with the principles which I maintain it will do nothing but keep to the doctrine which, up to now, civilized nations and writers of public law have professed. I do not see why it should be charged with liability before history because it does not care to submit Venezuela to the special theories of the Commissioner of Germany.

The Germans then would enjoy, *as they have been enjoying*, more guaranties than those which the Venezuelans have. I say more guaranties, since, if they preserve their neutrality, they will only be molested occasionally. I shall ask, in my turn, if Venezuela has agreed to establish a mixed commission, and that commission has been established in order to judge in conformity with the principles of equity, what will history say if that commission, because of capricious reasons *of a political order*, should sanction principles contrary to the law of nations in order to apply them to Venezuela? Will it not say that it has disregarded its trust?

To the sketch which the Commissioner of Germany has made, supposing that the Venezuelans are enriching themselves at the cost of the Germans, I am going to oppose a parallel one. A civil war arises in Venezuela; the Venezuelan, more or less involved in the political strife, fears for his property, and if he has cattle or valuables in an insecure place he wishes to rid himself of them; but this operation is not easy. Then appears the neutral, the foreigner, especially those who by occupation are mere merchants, indifferent to the politics of the country. This latter, who solely thinks of his business, shielded by this especially favorable opportunity, realizes the profit in the negotiation, and obtains everything at a low price. Or even more, the same person has no resources, but he has the advantage that he is a foreigner. He insinuates to the Venezuelan that the goods should be placed in his name, and thereby he obtains an advantage; if the goods are lost, he will certainly make an advantageous claim. Or in the midst of the conflict he will be the manager and partner of him who by violence may be able to take possession of the property of others, and by insatiable greed he will institute its destruction, and later, if he be the victim of the natural redress and should suffer the consequence of his acts, he will make there, in the interior of the country, with four witnesses at his command, a proof of violence, and who shall discover the truth? Nevertheless, it is not impossible that some time the corner of the veil which covers these things may be lifted, and it may well serve as an index of what may happen in the case of Otto Redler & Co. (Considerations like these can be found in Pradier-

Fodéré). I do not attempt to make a charge against the claimants, nor a general observation concerning them; I speak of what at times happens.

As an opportune observation, it is well to note that the commerce of Venezuela has generally been carried on by Germans and they have entered into the country, driving out the Venezuelans who theretofore carried on this industry. Is not this the reason why the Venezuelans rob them?

The Commission says the convention of Washington shall proceed upon a basis of absolute equity, and if we adhere to this we must decide against the doctrine of the German Commissioner, returning his own argument, that it is not just to demand the same liability of a state of a political organization which is in a certain manner incomplete, as from another which, to its praise, has enjoyed a solid constitution. The man who comes to the United States, for example, has a right to expect more from that Government than the immigrant who comes to these countries whose historical condition is still that of political disturbances, and therefore if the liability is not to be equal the advantage must be with us. Liability is in direct proportion to capacity.

I repeat, and I desire that the umpire shall carefully investigate, this final portion of my opinion to which the absolute necessity of defense urges me, and remember that I would have desired to keep the discussion upon a more elevated plane.

The Commissioner of Germany says that amnesty in Venezuela frequently shields the acts of revolutionists, and it is natural, therefore, that the Government should be held liable for acts done by them. The honorable Commissioner is in error; amnesty only shields *political* crimes, but with respect to the liability at common law that a rebel might have incurred a perfect right of civil or criminal action against him remains to the injured party. This results from the general spirit of our laws.

I seek the truth loyally, and I do not attempt to deny the obligations contracted by Venezuela. The umpire will consider and decide in his high sense of equity, and I will conform my conduct to his judgment.

I am of opinion that the claim of Kummerow should be disallowed.

[OTTO REDLER & CO. CASE.]

GOETSCH, *Commissioner:*

The claim of Redler & Co. is composed of three parts.

I. A claim for 7,647.68 bolivars. This sum was admitted by the Government of General Crespo, after his rise to the constitutional presidency of the Republic, as appears from document No. 1 (decree of the National Executive, signed Velutini). The recognition was published in the Official Gazette, No. 7147, of October 23, 1897. The recognition took place by virtue of a decree of June 9, 1893. It has emanated, therefore, from a legal act of Venezuela. This constitutes, according to the opinion of the German Commissioner, a final adjudication, coupled with the circumstance that Venezuela has not paid up to the present. It is not for the Mixed Commission to examine this decision, nor to seek the origin of this debt; and still less to declare the determination of that Government without force. This would be

equivalent to annulling the decree of June 9, 1903, which could not pertain to the jurisdiction of the Commission.

After the Government of General Crespo had become established in a legal and constitutional character, it acquired the right, not only by the constitution of Venezuela, but also by the laws of nations, to adjust, by means of legislation, the claims arising out of the revolution. This right has not been disputed by governments subsequent to that of Crespo, and therefore they have recognized the decree and they have also issued similar decrees. If the German-Venezuelan Commission should alter the decree, it would intervene in the order of things legally constituted and would exceed its powers and create a disastrous juridic conflict.

A decree issued at a later date, in consideration of the financial situation of Venezuela, by which only the payment to the creditors of 15 per cent upon their claims is ordered, in no way impairs the legal right which the claimant has, since the debtor—in this case the Venezuelan nation—has no right to reduce at its discretion claims which have been recognized, to the injury of the creditor. Thus, the claimant has shown in a credible manner, in his letter of June 18 of the present year, that, notwithstanding his repeated attempts and owing to the revolution which afterwards arose against General Andrade, he could not obtain the payment of his recognized claim.

The claim of 7,647.68 bolivars appears, therefore, to be justified, as also the 6 per cent interest, counting from the 7th of October, 1893, the date of its presentation to the Commission, which then had jurisdiction, until the payment of the debt.

II. The second claim amounts to 3,732 bolivars. The juridic foundations which support this claim are the same as those in Case I, with the difference that there is no question of *res judicata*. But the claimant having presented his demand at a proper time, it is the fault of the Government then existing that until now no determination in the matter has been reached.

It is for the Venezuelan-German Commission to make satisfaction for the omission. The decree issued by the Government of General Crespo should serve as a guide which permits the determination of the claim. The amount of the claim, 3,732 bolivars, not having been disputed, and the legal relation being the same as that in Claim I, the demand should be allowed, including interest at 6 per cent annually, beginning with January 28, 1893, until the complete extinguishment of the debt.

III. The third claim amounts to 9,932.88 bolivars. Neither the agent of the Government of Venezuela nor the Venezuelan Commissioner disputes the amount of this claim. On the other hand, they deny to claimant, as they do also with respect to claims I and II, the right to present his claims before the Mixed Commission, arguing that because of active participation in the revolution of 1892—that is to say, ten years ago—he has violated his neutrality, and has thereby lost his right to be protected by the German Government.

In the first place, the German Commissioner notes the lack of strict proof to sustain the objection that the claimant had violated his neutrality in 1892. Mr. Redler has never acknowledged that he knew that the merchandise sold by him was destined to aid the revolution. The sale was made to individuals. With respect to the sale to Ysava, it was only afterwards that the vendor learned that the merchandise

was destined for General Crespo. (See letter of Redler, dated June 15, 1903.) In the second case also the sale was made to an individual. The circumstance that he made demand then upon Carlos Herrera for payment proves the good faith of Redler. (See letter of Redler, June 15, 1903.) In this case also he learned later that the merchandise was for Crespo, for which reason his demand was rejected, and he was compelled to address himself to the Government. But even in the supposition, which is denied, that Redler did not observe the necessary caution, and has failed to observe the neutrality imposed on foreigners, the following observations should be taken into consideration:

The Government of that time would have had to submit Redler to trial and to demand an account of his actions. This has not been done. Moreover, the revolution succeeded and assumed the power. Afterwards amnesty was decreed and put into effect in favor of all the individuals and in relation to all the acts connected in any way with the revolution—a logical attitude, since the triumphant revolutionists could hardly impose punishment upon themselves. The decree of Crespo, dated June 9, 1893, by which all the claims of persons who had furnished aid and support to the revolution are recognized, gave legal expression to the foregoing conclusion.

A similar state of things exists now. All the persons who cooperated in the triumph of General Castro also resisted the laws of the country; but lawfully they must be considered as pardoned, for General Castro had legally attained the constitutional Presidency of the Republic. Thereby Redler, in consequence of the effective and legal amnesty, can not have lost his right to claim before a mixed commission. Moreover, ten years have passed since the pretended violation of neutrality. Therefore the offense made should be considered pardoned, and with it all the consequences which might have been derived therefrom disappear as the general principles of law provide.

It seems absurd to the German Commissioner to contend that the Commission should fulfill the office of a Venezuelan judge, imposing fines upon Mr. Redler for an action which took place ten years ago, and which in general has been wiped out by amnesty.

With reference to the third claim, it is also asked that Mr. Redler be allowed the sum of 9,932.88 bolivars, together with interest at 6 per cent, commencing from the 11th of August, 1902 (the report of the judge of Barquisimeto to the attorney-general of the State), until the extinguishment of the debt. The reasons which impose liability upon the Government of Venezuela in principle in the case have already been set forth in the claim of Kummerow. Reference is made to them.[a]

ZULOAGA, *Commissioner:*

Otto Redler & Co. claim (1) 7,647.68 bolivars, the value of the munitions of war furnished the revolution in 1892 upon the western coast, near Puerto Cabello. In the proof which they present General Mora says that this is proven by the account which was presented to him with the approval, at the foot, of the gentlemen who composed the revolutionary committee. This sum was acknowledged to be due by the Government and was to be paid in debt of the revolution. They claim, moreover, 3,732 bolivars as a balance of the price of supplies of

[a] See p. 527, 531.

war furnished also to the revolution in 1892, as appears from the receipt of the revolutionary committee, which is produced in copy. As appears from the receipts presented, Messrs. Redler & Co. were revolutionists in 1892, since they furnished munitions of war to the revolutionary parties.

The revolution in 1892 was successful, and the Government paid *those who aided its cause* (as Redler & Co.) with bonds of the revolution. In the Official Gazette, No. 7147, of October 23, 1897, which they cite, it appears *that the bonds that belonged to them were at their disposal*, because of the credit which had been recognized. From the moment that the claimants intervened in the revolution of the country they lost their neutrality and the right of diplomatic protection of their Government. This is a principle of international equity generally accepted. And it is, moreover, singular that protection to recover the value of munitions of war furnished revolutionists and to compel them to be paid for under more favorable conditions than the other aiders of the revolution.

The claimants, in their new application which they make, assert that they sold those supplies, some to Casimiro Ysava, who paid for them partly in cash, which is false, since in the certificate of the company it is said that the supplies were furnished to the revolution on the 20th of June and that a sum on account was paid on the 23d of June, three days after the sale. Carlos Herrera, from information which I have received (I do not assert it), appears to be an individual who at that time had been at arms against the Government. The explanation which the claimants make, even if it were true, would not in any way change the situation, since they themselves say that their credits are for supplies to the revolutionists.

I am of opinion, therefore, that the case of the two credits claimed ought to be disallowed and that, it appearing from them that Otto Redler & Co. had interfered in the political strifes of the country, the other claim referring to the sacking of their house in Barquisimeto ought not to be considered, because they lost their neutrality which gives them the right to claim before this Mixed Commission. It would be impossible to acknowledge the right to recover in persons who take part in the politics of the country if the violences which they suffer are unjust or the work of just retaliation on account of their partial conduct.

P. S.—I disallow these claims in the first place because I believe that there can not be admitted to Redler & Co. the right to present them, having lost their neutrality, against the claim of Barquisimeto. In case Redler had not lost that neutrality, the reasons set up by the agent of Venezuela and the general principle that it was an act of the revolution would prevail.

I do not find that the theory of amnesty is in any way applicable to this matter.

[FULDA CASE.]

GOETSCH, *Commissioner:*

From the evidence it is proved that the claimant has suffered damages amounting to 5,000 bolivars occasioned by revolutionists. Neither the fact nor the amount of the damage have been disputed by the agent of the Government of Venezuela.

The German Commissioner is of the same opinion as before and refers to his opinion in the other claims, to the effect that Venezuela ought to repair the damage without considering whether or not it could have been avoided.

The agent of the Government of Venezuela objects that the Government was unable to protect Mr. Fulda against the injury of the revolutionists because this took place during the course of an international conflict; but with respect to this proofs have not been produced nor obtained.

The warlike attitude of the allies limited itself, as is well known, to the seizure of the Venezuelan ships to maintain an effective blockade of the ports of Venezuela without any resistance on the part of the latter. Therefore it is not seen why the state was prevented from properly protecting the resident foreigners in the interior where warlike action on the part of the allies was not conducted, not even expected.

Now, if what is proposed with reference to the international conflict is to assert that the subjects of the State which finds itself at war with Venezuela can be deprived with impunity of their property so long as the war endures, this would be a doctrine which would be in conflict with the principles of the law of nations, as well as against those of civilized humanity.

The German Commissioner asks that the demand of Mr. Fulda for an indemnity amounting to 5,000 bolivars be allowed with interest at 6 per cent annually from the day upon which the injury was committed until the complete extinguishment of the debt.

GOETSCH, *Commissioner* (second opinion):

The umpire of the German and Venezuelan Commissions, the honorable General Duffield, desires to know the opinion of the Commissioners on the following questions growing out of the claims above mentioned:

I. Is it admissible that the liability of the Government of Venezuela should be limited to damages occasioned by revolutionists in such cases as the Government of Venezuela was able to prevent the damages and did not do so?

II. In case of an affirmative answer to the question contained in No. I, is it for the Government or claimant to furnish the proof that the Government was capable of preventing the injuries and did not do so?

The German Commissioner answers the question I negatively. Bearing in mind the clear provisions of the protocol of February 13 of the present year, he does not hesitate in saying, as his personal and juridic opinion, that in case the Commission should reach a contrary decision it might perchance be considered in contradiction to the terms and spirit of the treaty. Besides, in order to better sustain his opinion, he makes reference to the judgments before cited, of prior international commissions, in the judgments of which the culpability of the Government in no way entered. (See seizure of an American ship by Venezuelan revolutionists, Moore, 1693–1732; the case of Easton, Moore, 1629–30; and the seizure of the American ship *Montijo* by Colombian revolutionists, Moore, p. 1421.) In the last case cited it was said:

> The first duty of every Government is to make itself respected both at home and abroad. If it does not do so, even if by no fault of its own, it must make the only amends in its power, viz, compensate the sufferer.

Besides, after this matter has been settled in the French Commission in favor of the French claimants, the German Commissioner, by virtue of the right of the most-favored nation, ought to insist energetically that the German claimants should not be treated worse than the French claimants, or than the American claimants have been in former cases. Do not equity and justice demand that all foreigners, so long as their governments insist upon it, should be treated alike in Venezuela?

II. If, notwithstanding all this, the honorable umpire should arrive at the conclusion that the question of blame is decisive of the case, the German Commissioner is of opinion that the burden of presenting proofs as to the lack of negligence falls on the Government. The German Commissioner agrees with the honorable umpire in the interpretation, which he has occasionally given orally, that in a constitutional state—and he desires to consider Venezuela as such—the ability of protecting its inhabitants is presupposed.

Besides this, it ought to be considered as an obligation that international law imposes upon all civilized nations, to offer protection to foreigners—an obligation from which Venezuela can not escape. All the less, since by the law of May 14, 1869, she has invited foreigners "to embark their capital and skill in Venezuelan commerce." (Moore, p. 1702.) From the obligation of furnishing protection springs the obligation of freeing itself from blame in case protection in a particular case was not possible.

In the oral discussion of the question the Venezuelan Commissioner set up the analogy of the civil law and deduced therefrom that the introduction of proofs belonged to the party demanding anything—that is to say, to the claimant. But there also exist in civil law "presumptions of law," which shift the burden of proof (*pater est quem justæ nuptiæ demonstrant.* The responsibility of railroad companies, etc). According to this, presumption of international law should take the place of proof, or, what would be the same thing, the Venezuelan Government should only be able to avoid the liability by the production of counter proof. This in every case would be in accord with the protocol.

He who has recognized in principle his "liability" in cases of confiscation of or injury to property and wishes to free himself from the liability, conventionally assumed, is at least under the obligation to prove facts which would free him from such liability. Besides this, there is the following: The claimant would almost always be unable to present proofs that the Government could have protected him. He does not know the tactical and strategic dispositions and intentions of the Government, and as the peaceful citizen, in the generality of cases, he will not be able to know the objects, management, and movements of the revolutionary troops. On the other hand, it is easy for the Government to show in a particular case why a village should have to be abandoned to the revolution, or the troops and the police of the Government had to be withdrawn from it. Therefore it is equity which places the burden of proof upon the Government.

ZULOAGA, *Commissioner:*

I believe that the claim ought to be disallowed, because of the reasons set forth by the agent of Venezuela. The Commissioner of Germany says that it is well known that the warlike attitude of the allies

was limited, after having made capture of the Venezuelan vessels, to making the blockade effective. It is also well known that General Castro, President of the Republic, had completely conquered the revolution in the action at La Victoria; that immediately, therefore, in order to be able to dispose of the remainder of the revolutionary armies, he divided the forces of the Government, sending a part to the east in order to stop the passage of General Rolando, who was marching toward that place, and another to the west in order to quickly overtake the rebels, Matos, Riera, and others; that in this state of things the international conflict arose and the Government prevented, on account of the losses of its ships, from concentrating its forces, Rolando was able to rally in the central region, and even to menace the capital, since the army of the Government had to go overland by forced marches for a great distance.

The Government did at that time everything that was reasonably possible to put a stop to the revolution, as well in a military manner as politically. If the international conflict had not arisen, very probably the revolution would have terminated last year.

The imputation which the Commissioner of Germany casts upon the honorable agent of Venezuela, that the latter might assert that subjects of a state which were not at war with Venezuela might be deprived of their property with impunity, is an uncalled-for accusation, since from the words of the agent of Venezuela it is not possible to loyally deduce what the Commissioner seeks to charge him with. This language of the Commissioner is very poorly suited to facilitating the labors of this Commission. I am of opinion that the claim of Fulda ought to be disallowed.

ZULOAGA, *Commissioner* (second opinion):

The Government is not liable to individuals for the damages which insurgents, revolutionists, or people in revolt, in whatever manner against the constituted authority may cause.

The Government should furnish protection and security, but it is in so far as the means at its disposition and the circumstances under which the acts have been committed permit. And the causes which may make a government more or less culpable are so many and so different that it would be impossible even to form general ideas about the matter. Besides, the circumstances which control in a disturbed society are so complex that it is a question of political tact, which is only exceptionally found in men of the government.

Extreme energy and implacable repression are at times the greatest errors and serve only to foster insurrection. Revolutions are not always occasioned by faults or errors of the Government or by the simple rebellious spirit of the revolutionists. They follow multiple causes, and not seldom upon the political horizon the cloud of revolution is seen and condenses itself without the patriotism of the best citizens of the Government or of the opposition being sufficient to restrain its violent effects, they having their source in such profound economic or political causes.

Europe itself, so proud to-day of the internal peace which its states have been happy to preserve during the second half of the past century, notwithstanding the powerful organization of its governments, sees

with dread, to say the least, how each day the social revolution grows to which the entire working masses are affiliating themselves.

Governments are constituted to furnish protection, but not to guarantee it, and it is absolutely impossible that a tribunal such as this should undertake to investigate the causes of an injury upon general principles of internal politics, under the penalty of finally constituting itself as a judge, not of the *cases* for damages submitted to it, but of the Government or of the country itself, which would be an act of intervention contrary to the principles recognized by all states.

Nevertheless some governments and authorities maintain that for certain particular acts, taking into consideration the circumstances of the case, liability may be fastened upon the state for damages which an individual may suffer, if the facts show in a clear and evident manner that the state has been negligent in every way, in furnishing protection which he ought reasonably to expect from it. According to this theory the state is *not liable because of want of protection*, but for such culpable and grave negligence, which is equivalent to its own acts against private property.

He therefore who seeks to recover from a state for damages suffered under those conditions, in order that his action may prevail, has to prove (1) that he has suffered the damage and (2) that the state is in a certain manner liable for its negligence in the concrete case.

This is the doctrine of Fiore. He says:

> It is not sufficient that a state should prove that it has suffered an injury resulting from an act of individuals who reside in another state in order to fasten the liability upon the latter, and to oblige it to make reparation; it is necessary that it prove that the prejudicial act is morally chargeable to the other state, or that that state ought or could have prevented it, and that voluntarily it has been negligent in doing so.[a]

But this is nothing except the application of the principles of common law that the burden of proof is upon the *claimant*.

In the application of these principles of indirect liability it is necessary to bear in mind that the government of a country during times of war finds itself confronted with greater difficulties and problems than in times of peace, and its special attention must be directed first to the reestablishment of the disturbed peace, and that liability is in direct proportion to capacity.

Fiore, speaking of neutrality, says:

> The incapacity of a neutral state to prevent the violation of the duties of neutrality also excludes the liability of the Government, and therefore the right of the belligerent to consider the neutral state as liable by reason of the violation of the duties of neutrality.[b]

If this rule was concisely expressed concerning neutrality where the obligations of neutral governments are in a certain manner direct, what shall we say if in the case under consideration there is a question of the internal management of a state? This principle of the liability of a state for negligence would have to be further modified by the one which provides that foreigners can not assert more right in the territory than that which nationals may possess, and by the law of Venezuela the state is not liable for revolutionary damages.

Putting aside all this discussion and the principles of international law to which the necessity of interpreting the meaning of certain provisions of the protocol of Washington has brought us, and confining

---

[a] Fiore Droit Int. Pub., vol. I, p. 582, sec. 673.
[b] Idem. Sec. 1569.

ourselves solely within the scope of absolute equity, I ask, would it be equitable that foreigners who live in the territory of Venezuela should withdraw themselves from the political conditions of the country, and that in advantage over the Venezuelans they should not only obtain an indemnity from the Government for damages which the latter might have caused them, but also for the damages of revolutionists, against whom the Government has had to contend and against whom it has had to employ all its energy and money and sacrifice the lives of not a few Venezuelans? Would it be equitable that between a Venezuelan and a foreigner the first might say: "My home is in mourning, since beloved members of my family have died in the defense of the Government and the constituted authorities; my ruin has been consummated, since I have not been able to carry on my business, or I have been the victim of passions of its opponents, because I have resisted them," and that the foreigner should say: "But I lose nothing, and I live in this community which is in conflict just as if in the best of times. I do not defend the Government, I am not under this obligation, but the Government pays me not only for the injury which it may cause me, but also for the injuries which its opponents occasion." I believe that in equity the claims of Kummerow and F. L. Fulda can not be admitted.

[FISCHBACH AND FRIEDERICY CASES.]

GOETSCH, *Commissioner:*

Various witnesses testify that both claimants were taken prisoners on October 20, 1902, near Carúpano by a revolutionary detachment, with the intention of taking money from them, and that to this end they were insulted, assaulted, robbed, bound to a post, threatened with death, and thrown into a house infected by smallpox, in order that the payment of the sum demanded might be accomplished. The claimants demand for this treatment an indemnity, to which Friedericy especially adds the injury resulting in a rupture caused by the tying and other ill treatment to which he was subjected. The detachment in question was commanded by two officers, Gutierrez and Gonzalez, and was distinguished, as one of the claimants states, by a white design with black letters thus: "Libertador Army." This proves that the authors were regular troops of the revolution, and not merely marauders or robbers. Both Commissioners ask the honorable umpire to decide for the present, in principle only, the question whether the Government of Venezula is obliged to pay to the two claimants an indemnity for the ill treatment suffered. The question of the amount of this indemnity will be a matter for future consideration. It is recognized by the law of nations, and also it has been adjudged by international commissions of arbitration, that States may make themselves liable for the unlawful ill treatment and imprisonment of foreign subjects, and that they are obliged to pay a proportional indemnity. Thus it happened in the case of *Col. Lloyd Aspinwall.* "Something would seem to be due to the crew of the vessel as indemnification for ill treatment, as it were." (Moore, History and Digest, pp. 1015 and 1016.) (See also page 1171, Henry Dubo's claim for illegal arrest and imprisonment; also page 1579, the Santos case; 1653, No. 15, Charles Weile; page 1852, Van Bokkelen; see also page 1714 and page 1724, the arrest of the crew of the Venezuelan Steam Transportation Company.)

It is undoubted that the liability *extends* to the arrest and ill treatment suffered at the hands of the officials of the Government; but the liability *might also be extended* to the hands of officials or revolutionary troops.

The principles of international law and those derived from other sources which imply liability in cases of confiscation or damage of property by officers or troops of the revolution that have been already discussed in detail with respect to the claim of Kummerow I refer to said opinion.

These principles fix also the liability in cases of acts executed against the liberty and health of a person, inasmuch as these are properties more precious than material or monetary ones. Likewise, every Government is obliged to furnish protection to foreigners, whose liberty it ought to guarantee. By not doing so it makes itself liable and should make reparation to the person injured. (See Moore, p. 1444, and the Panama riot, p. 1362.) Neither the Government of Venezuela nor that of the revolution has instituted any sort of proceedings against the officials named and the detachment under their command in order to chastise them for the barbarous ill treatment and tying of which they made German subjects the victims. If with reference to this representation before the Government in Caracas it had been attempted, no other result would have been obtained than the statement that the Government had lost control in the neighborhood of Carúpano. In the claim of the Venezuela Steam Transportation Company, an indemnity was allowed by the Commission, at the solicitation of the Government of the United States of America, to the American sailors imprisoned by Venezuelan revolutionists. (Moore, History and Digest, p. 1714–1724.) The honorable umpire is therefore asked to declare in principle the liability of Venezuela in the present case also.

In any case the Government of Venezuela would be liable for the articles stolen, in accordance with article 3 of the protocol.

ZULOAGA, *Commissioner:*

The claims of Friedericy and Max Fischbach are founded, as they say, upon ill treatment which a revolutionary band inflicted upon them. Taking into consideration the facts, if they are proved, I find that they constitute a common injury received from a group of highway robbers, and I believe that the penalties of the case, as, for example, a fine, should be put into effect, but I do not understand why the act which constitutes the private wrong has to be gone into and pecuniary indemnity made by the State to the victims of the atrocity. There are precedents, it is true, of indemnities claimed diplomatically for unlawful seizures, but as far as I have been able to see they have been committed by authorities in violation of the laws, and in that case the State is liable because its officials are the wrongdoers—because the one who commits the violation of the law is charged with furnishing protection. From this to seek to make the State a sort of surety against every sort of wrongdoing which individuals suffer in its domains there appears to me to be some difference. These acts, as the claimant himself states, are committed by a band of revolutionists—that is to say, by men who proceed upon their own account, without any other rule than to take advantage of the disturbed situation of the country to commit their depredations. Revolutions or political disturbances and their

natural consequence of insecurity and violence are social epochs which in general all countries have passed through and against which none can provide nor believe that it may withhold itself definitely, and it is inadmissible that a State should be made liable for private acts, only because of the fact that they are committed during a revolution. By the Venezuelan law a criminal suit can be instituted (1) if the judge has knowledge of the fact; (2) by a *charge* made by the party aggrieved; (3) by information of any citizen to the judge of the act committed. It is therefore in the hands of Friedericy and Fischbach to accomplish the punishment of the guilty parties.

DUFFIELD, *Umpire:*

The Commissioners disagree as to the liability of Venezuela under the protocol for acts of revolutionists in the recent civil war, and as to the responsibility of Venezuela for wrongful seizures of or injuries to property.

The Commissioner for Germany is of the opinion that under Articles I and III of the protocol of the 13th of February the Venezuelan Government is liable in these cases, because of the admission of liability of the Venezuelan Government in those articles, and also upon general principles of international law.

The Commissioner for Venezuela disagrees with the Commissioner for Germany, and is of the opinion that Article III of the protocol contains nothing which differs from the rules—

that nations have laid down in general as established in this connection, but is only a confirmation of those principles, with the intention at most, of contradicting the doctrine of absolute irresponsibility of governments in civil wars as held by many governments and sustained by international authorities.

He also is of the opinion that Article I of the protocol, in which the Government of Venezuela acknowledges in principle the justice of the claims of German subjects *presented* by the Imperial German Government—

refers to the claims already [then] presented, which are those of which Article II of the protocol treats, claims which the Government of Venezuela held were, in general, entirely unjustified.

It is insisted by the Commissioner for Germany that because of the admission made by the Venezuelan Commissioner of the justice in principle of two claims heretofore submitted to the umpire based upon acts of revolutionists, and in which the Commissioners only disagreed upon the question of amount, that the principle must be considered as settled by the Government of Venezuela in this and all future cases coming before this Commission. The umpire agrees with this position of the Commissioner for Germany, in so far as the particular claims referred to are concerned. It has been held in former international commissions that there is no power vested in an umpire to grant a rehearing. In the present case the umpire is of the opinion that the true interpretation of the protocol does not authorize any rehearings, unless perhaps in extreme cases where the application is based upon newly discovered substantive and not cumulative evidence. He is unable, however, to go to the length urged by the Commissioner for Germany. It is undoubtedly true, as he says—

that in the interest of unity of decisions of the Commission a question of law should not be decided in one way to-day and in another way to-morrow.

But, as the Venezuelan Commissioner frankly says in his opinion in one of said former claims—

> although I have accepted the claim in principle, a better study of the matter has convinced me that it is an error, and that the principles which are to govern me are those which appear in my opinion in the matter of Kummerow (claim No. 7),

in which he says—

> I confess that my first impression upon reading it (Article III of the protocol) was one of extreme perplexity and uncertainty, but a more careful study of the matter convinced me that it could in no way contain a rule of exception which goes so far as to make the Government responsible for every injury done a German,

the umpire is of the opinion that it is not only the privilege but the duty of the Commissioner for Venezuela to present his more carefully studied opinion on the question, the more so because the first impression of the umpire upon reading it "was one of extreme perplexity and uncertainty," and because the question is complicated and not readily solved. Moreover, the question is one of great gravity and importance, and upon its correct decision will depend the allowance or disallowance of many claims involving in the aggregate a very large sum of money.

The disagreement between the commissioners is evidence that the language of the article appears to be susceptible of two contrary meanings, and in determining which is the correct construction regard must be had to the situation of the high contracting parties and the circumstances preceding and surrounding the execution of the protocol. (Opinion of Umpire Little in the United States and Venezuelan Commission, 1889 and 1890.) After a considerable period of diplomatic correspondence between the two Governments with reference to the claims of German subjects against the Republic of Venezuela, without reaching any agreement as to a satisfactory adjustment of the same, the German Government on the 7th day of December, 1902, submitted an ultimatum containing the following:

> In addition, the manner in which the German claims arising from the wars have been treated by the Government of the Republic has led the Imperial Government to believe that the other credits also of her subjects against the Republic need her protection to obtain a just settlement. In that sense are to be considered the German claims arising from the present civil war, the credits of the German houses growing out of the construction of the slaughterhouse in Caracas, and the sums owing the Gran Ferrocarril de Venezuela for the interest and amortization of the bonds of the Venezuelan 5 per cent loan of 1896, which were delivered to it in the place of a guaranty of interest. Instructed by the Imperial Government, I must also ask the Venezuelan Government to immediately make a declaration to the effect that it recognizes in principle that these claims are well founded, and that it is ready to accept the decision of a mixed commission with the object of having them settled and assured in all their details. (P. 40 of Correspondence of the Department of Foreign Affairs of the United States of Venezuela, published under the authority of an executive decree of the Republic of Venezuela, December, 1902.)[a]

A similar position was taken by the other allied powers, and on the 9th day of December, 1902, the allied powers established the blockade of the ports of Venezuela and seized certain of her war vessels.

The protocols of February 13 and May 7, 1903, were entered into by the parties while the war vessels and ports of Venezuela were still in the control of the allied powers, and as the only amicable mode of raising the blockade and restoring peaceful relations between the respective Governments.

---

[a] Appendix, p. 971.

Soon after the institution of the blockade the Government requested Mr. Bowen, envoy extraordinary and minister plenipotentiary of the United States to Venezuela, who was also the temporary representative of British and German interests in Venezuela, to propose to Great Britain and Germany that the claims for alleged "damages and injuries to British and German subjects be submitted to arbitration." With the consent of his Government he was soon after appointed such arbitrator and mediator.

The ability and diplomacy with which he performed the duties of his office have resulted in the meeting now in Caracas of international arbitration commissions between Venezuela and ten of the principal nations of the world, to adjust amicably and according to the principles of justice and equity their conflicting claims; the most notable instance of international arbitration in the history of the world.

In the correspondence which took place during these negotiations the following statements by the representatives of the respective Governments are material:

To the request of the Government of Venezuela through Mr. Bowen, that those Governments would refer "the settlement of claims for alleged damages to the subjects of the two nations during the civil war" to arbitration (Mr. Bowen's pamphlet, Venezuelan Protocols, p. 2),[a] the Government of Great Britain and the German Government replied through the Secretary of State for the United States, December 22, 1902.[b]

His Majesty's Government have, in consultation with the German Government, taken into their careful consideration the proposal communicated by the United States Government at the instance of that of Venezuela. The proposal is as follows:

"That the present difficulty respecting the manner of settling claims for injuries to British and German subjects during the insurrection be submitted to arbitration. The scope and intention of this proposal would obviously require further explanation. Its effect would apparently be to refer to arbitration only such claims as had reference to injuries resulting from the recent insurrection. This formula would evidently include a part only of the claims put forward by the two Governments, and we are left in doubt as to the manner in which the remaining claims are to be dealt with. * * *"

His Majesty's Government desire, moreover, to draw attention to the circumstances under which arbitration is now proposed to them. The Venezuelan Government have during the last six months had ample opportunities for submitting such a proposal. On July 29, and again on November 11, it was intimated to them in the clearest language that unless His Majesty's Government received satisfactory assurances from them, and unless some steps were taken to compensate the parties injured by their conduct, it would become necessary for His Majesty's Government to enforce their just demands. No attention was paid to these solemn warnings, and in consequence of the manner in which they were disregarded, His Majesty's Government found themselves reluctantly compelled to have recourse to the measures of coercion which are now in progress. His Majesty's Government have, moreover, already agreed that in the event of the Venezuelan Government making a declaration that they will recognize the principle of the justice of the British claims and that they will at once pay compensation in the shipping cases and in the cases where British subjects have been falsely imprisoned and maltreated, His Majesty's Government will be ready, so far as the remaining claims are concerned, to accept the decision of a mixed commission, which will determine the amount to be paid and the security to be given for payment. A corresponding intimation has been made by the German Government. This mode of procedure seemed to both Governments to provide a reasonable and adequate mode of disposing of their claims. They have, however, no objection to substitute for the special commission a reference to arbitration with certain essential reservations. These reservations are, so far as the British claims are concerned, as follows:

1. The claims, small as has already been already pointed out in pecuniary amount,

[a] Appendix, p. 1029. [b] Appendix, p. 1033.

arising out of the seizure and plundering of British vessels and outrages on their crews and the maltreatment and false imprisonment of British subjects, are not to be referred to arbitration.

2. In cases where the claims is for injury to, or wrongful seizure of, property the questions which the arbitrators will have to decide will only be (*a*) whether the injury took place and whether the sentence [seizure] was wrongful, and (*b*) if so, what amount of compensation is due. That in such cases a liability exists must be admitted in principle.

3. In the case of claims other than the above we are ready to accept arbitration without any reserve.

This was sent from Washington December 27, 1902, by cipher cable, and on the 31st of December, 1902, President Castro wrote to Mr. Bowen:[a]

I recognize in principle the claims which the allied powers have presented to Venezuela. They would already have been settled if it had not been that the civil war required all the attention and resources of the Government. To-day the Government bows to superior force, and desires to send Mr. Bowen to Washington at once to confer there with the representatives of the powers that have claims against Venezuela, in order to arrange either an immediate settlement of all the claims or the preliminaries for a reference to the tribunal of The Hague or to an American Republic to be selected by the allied powers and by the Government of Venezuela.

The reply of the German Government, through the United States ambassador at Berlin, to the Secretary of State, and by him to Mr. Bowen, on the date of January 6, 1903, stated among other things:[b]

The German Government learns with satisfaction that the Venezuelan Government has accepted its demands in principle. Before further negotiations can be undertaken with Venezuela, however, it seems necessary that the President of Venezuela should make a definite statement as to the unconditional acceptance of the three preliminary conditions set forth in the German memorandum of December 22, 1902.

On the following day President Castro wrote to Mr. Bowen:[c]

Mr. Minister: The Venezuelan Government accepts the conditions of Great Britain and Germany; requests you to go immediately to Washington for the purpose of conferring there with the diplomatic representatives of Great Britain and Germany and with the diplomatic representatives of other nations that have claims against Venezuela, and to arrange either an immediate settlement of said claims or the preliminaries for submitting them to arbitration.

At the instance of the German Government Mr. Bowen, under his authority from Venezuela, signed the document of January 24, 1903, containing this language:[d]

II. All the other claims which have already been brought to the knowledge of the Venezuelan Government, in the ultimatum delivered by the imperial minister resident at Caracas—i. e., claims resulting from the present civil war, further claims resulting from the construction of the slaughterhouse at Caracas, as well as the claims of the German Great Venezuelan Railroad for the nonpayment of the guaranteed interest—are to be submitted to a mixed commission should an immediate settlement not be possible.

III. The said commission will have to decide both about the fact whether said claims are materially founded and about the manner in which they will have to be settled or which guaranty will have to be offered for their settlement. Inasmuch as these claims result from damages inflicted on property, or the illegal seizure of such property, the Venezuelan Government has to acknowledge its liability in principle, so that such liability in itself will not be an object of arbitration and the decision of the commission will only extend to the question whether the inflicting of damages or the seizure of such property was illegal. The commission will also have to fix the amount of indemnity.

From these documents it clearly appears that Germany and Great Britain insisted upon the admission of the justice in principle of the

[a] Appendix, p. 1034. [b] Appendix, p. 1035. [c] Appendix, p. 1036. [d] Appendix, p. 1037.

claims of their subjects already presented, and specifically demanded that in respect to claims for injuries to or wrongful seizures of property arising from the present civil war, * * * the questions which the arbitrators will have to decide will only be (*a*) whether the injury took place and whether the sentence [seizure] was wrongful, and (*b*) if so, what amount of compensation is due. That in such cases the liability exists must be admitted in principle. Three. In the case of claims other than the above we [they] are ready to accept arbitration without any reserve.

The result was the execution of the protocols of February 13 and May 7, 1903, under which this Commission is acting.

All of the protocols between Venezuela and the peace powers are in the same language, mutatis mutandis, as the United States protocol. (Note to the United States protocol in Mr. Bowen's pamphlet, p. 30.)[a]

It is therefore too plain to need argument that if any effect whatever is to be given to Articles I and III of the German-Venezuelan protocol, the rule of liability must be different from that under the protocols of the peace powers.

The umpire, therefore, agrees with the argument of the Commissioner for Germany that Articles I and III of the protocol can not be treated as merely superfluous or redundant. Certainly the admission which was required as a sine qua non to any arbitration, which was the consideration to the allied powers for returning to Venezuela the control of her war vessels and her ports, can not be disregarded in determining her liability.

Marshall, Chief Justice, says, speaking for the United States Supreme Court, in the *Nereide*, 9 Cranch, 419:

> Treaties are formed upon deliberate reflection. Diplomatic men read the public treaties made by other nations, and can not be supposed either to omit or insert an article common in public treaties without being aware of the effect of such omission or insertion; neither the one nor the other is to be ascribed to inattention.

This must be equally true in the case of the insertion of an article most uncommon, if not unprecedented, in treaties, and which contains a general admission of liability. A fortiori in this case, where an admission of liability is contained only in the protocols of those Governments which still held control of the war vessels and ports of Venezuela.

It is therefore the plain duty of the umpire, under the protocol, to treat those provisions in Articles I and III as substantive and material, and to give them the interpretation which they should have in the light of the circumstances immediately preceding and surrounding their execution.

The umpire agrees in opinion with the Venezuelan Commissioner that the fair construction of Article I, in which the Venezuelan Government "recognizes in principle the justice of claims of German subjects 'presented' by the Imperial German Government," is to restrict it to claims which had been presented at the time of the execution of the protocol. This is its literal wording, and Article II restricts the claims to "those originating from the Venezuelan civil wars of 1898 to 1900" and provides for their payment modo et forma. Moreover, there is a plain inference, from the special admission of liability in Article III in cases of wrongful seizures of or injuries to property,

[a] Appendix, p. 1047.

that the parties did not consider that Article I covered that class of claims. It is therefore necessary to determine the true intent and meaning of these words in Article III:

> The German claims not mentioned in Articles II and VI, in particular the claims resulting from the present Venezuelan civil war, the claims of the Great Venezuelan Railroad Company against the Venezuelan Government for passages and freight, the claims of the engineer, Carl Henckel, in Hamburg, and of the Beton and Monierban Company (Limited), in Berlin, for the construction of a slaughterhouse at Caracas are to be submitted to a mixed commission.
>
> Said commission shall decide both whether the different claims are materially well founded and also upon their amount. The Venezuelan Government admit their liability in cases where the claim is for injury to or a wrongful seizure of property, and consequently the commission will not have to decide the question of liability, but only whether the injury to or the seizure of property were wrongful acts and what amount of compensation is due.

In the opinion of the Commissioner for Venezuela the words of the article can not be literally interpreted—

> because [he says] that it would then make Venezuela admit her liability for any common crime committed by an individual upon a German subject, and that inasmuch as it is self-evident that this class of seizures or of injuries to property, while within the literal wording of the provisions, is not within its reason, it is the duty of the Commission to classify these wrongful seizures of or injuries to property.

And he suggests this classification: That the admission of liability includes all injuries to or wrongful seizures of property by the governmental troops or Government officials, but that it *does not include* wrongful seizures of or injuries to property by revolutionists.

The umpire agrees that the admission does not embrace common individual crimes not resulting from insurrectionary events, because it is quite apparent that with respect to wrongful seizures of or injuries to property the high contracting parties had in mind only those occurring during the present civil war. (See the ultimatum of Germany, above quoted, and the British memorandum of December 22, speaking also for Germany in regard to the terms of arbitration.)[a]

The umpire can not agree with the opinion of the Venezuelan Commissioner that the admission of liability by Venezuela is restricted to wrongful seizures of or injuries to property inflicted by the authorities of Venezuela acting in their official character. The Commissioner in support of this position quotes from Seijas the law of Venezuela of 1873, which enacts that the nation will not be expected to indemnify for injuries, damages, or seizures which were not caused by the legitimate authorities, acting in their public character, and he says—

> the protocol of February seems to have wished to abolish this just distinction, and for the reason that injuries inflicted by the forces of the Government, taking advantage of their position, it seems to me, makes the Government responsible;

and he continues:

> In the matter of the revolution [revolutionists] it results, according to those same principles, that the Government is not and can not be responsible for acts which are not its acts, but the acts of persons temporarily withdrawn from its control.

And that this rule of nonliability is—

> not only declared by the act referred to, but by the concensus of opinion of international law writers and precedents.

His argument, in brief, is that Venezuela only admitted, first, that German subjects would not be compelled to regard the provisions of

---

[a] Appendix, p. 1033.

the law of February 14, 1873, and present their claims to her *courts;* second, that said law should not be the test of liability in cases of injuries to or wrongful seizures of property, although he insists that the law declares the international rule of liability. It is to be remarked in passing that his statement is not accurate, because he does not deny the liability of Venezuela for acts committed by revolutionists who afterwards succeeded in establishing a new government, thus making the wrongfulness of the seizure depend not upon the act itself, but the result of the revolution.

It is plain that the admission was not demanded by Germany for the first reason, because that purpose was contemplated and actually consummated by the submission to arbitration and is explicitly stated in the first paragraph of Article III. As to the second, passing, for further consideration later in this opinion, the correctness of an interpretation of general words of admission of liability which permits their restriction to one of several grounds of liability, it is equally clear that this purpose is fully accomplished by the provision in the protocol with reference to local legislation.

It is now argued in behalf of Venezuela that her law in respect to acts of revolutionists declared the recognized rule of international law. It would seem logically to follow that her admission of liability would be as broad as the statute. And if the statute and the rule of international law were equally broad, her admission would cover both. It certainly can not be argued that while she admitted in general words her liability, contrary to the conditions of the rule laid down in her own statute, she may now claim nonliability under a rule of international law which she alleges is recognized by the consensus of opinion of all authorities on international law. Manifestly this is no admission at all.

From what has been shown by the correspondence it plainly appears that the principal bone of contention between the parties was their disagreement as to Venezuela's liability for injuries to or wrongful seizures of property resulting from the present Venezuelan civil war. Venezuela claimed nonliability because of her statute which she then insisted and still insists declared the correct international-law rule of liability. Germany denied this. Venezuela, from the necessity of the situation, receded from her position and admitted her liability. Now she contends: "I did not admit my liability under international law, although I did admit my liability under my statute, which declared the same principle of immunity I am now contending for. I did admit my liability under my statute, but I did not admit it under the principles of international law unanimously conceded, notwithstanding the rule of liability is the same in both."

Coming now to the final argument of the Commissioner for Venezuela, that international law absolves Venezuela from liability for acts of revolutionists and that her admission must be interpreted in the light of this rule—

Is his premise well founded? International law is not law in its usually defined sense. It is not a rule of conduct prescribed by a sovereign power. It is merely a body of rules established in custom or by treaty by which the intercourse between civilized nations is governed. Its principles are ascertained by the agreement of independent nations upon rules which they consider just and fair in regulating their dealings with each other in peace and in war. They reach

this agreement by comparing the opinions of text writers and in precedents in modern times, and these ultimately appeal to the principles of natural reason and morality and common sense. It therefore rests solely upon agreement. Obedience to it is voluntary only and can not be enforced by a common sovereign power. Any nation has the power and the right to dissent from a rule or principle of international law, even though it is accepted by all the other nations. Its obedience to the rule can only be compelled by an appeal to its reason and love of justice or by the superior force of the particular nation or nations whose interests are involved.

Applying this inherent nature of international law to the question under discussion, it follows that neither Germany nor Venezuela was by force of law compelled to accept the other's judgment as to a principle of international law upon which they differed. Each nation held to its own opinion of what the correct rule of international law was in the premises—Germany, that Venezuela was liable for injuries arising from insurrectionary events, and Venezuela that she was not. Arbitration is proposed by Venezuela. This, if accepted, would unquestionably leave the question of liability to be decided upon principles of international law. But Germany says, "No! I will not refer these claims to arbitration unless Venezuela first admits her liability." Now, Venezuela having by her admission regained control of her ports and her war vessels, contends that she admitted liability only in cases where she was legally liable. Certainly, this position can not be maintained. She was always liable for claims for which she was legally liable. Hence she admitted nothing. And yet we have seen of what momentous consequence this admission was to her. It is perfectly plain that Germany would never have released the ships and ports from which they were in position to make payment of the claims of their subjects if Venezuela had then interpreted her admission as she now seeks to do, or if Germany had had any conception that such interpretation would be sought to be given to words admitting liability generally.

The case of Venezuela falls within the rule stated by Vattel:

> If one who can and should clearly and completely explain has not done so, it is to his damage; he will not be allowed afterwards to bring forward restrictions [limitations] which he has not expressed. (Vattel, book 2, sec. 264.)

Here Germany requires from Venezuela an admission of liability in as broad terms as can be used. Venezuela could and should have explained her understanding of them. Not having done so then, she can not do so now. When Venezuela admits, without qualification, her liability for wrongful seizures of or injuries to property growing out of insurrectionary events during the civil war, she must be held to admit her liability for all wrongful seizures of persons and property during that period and under those conditions.

Moreover, substantially all the authorities on international law agree that a nation *is responsible* for acts of revolutionists under certain conditions—such as lack of diligence, or negligence in failing to prevent such acts, when possible, or as far as possible to punish the wrongdoer and make reparation for the injury. *There is*, therefore, a rule of international law under which Venezuela would be held liable in certain cases for acts of revolutionists. And there are some very respectable authorities which hold that a nation situated with respect to revolutions as Venezuela has been for the past decade and more,

and with the consequent disordered condition of the State, is not to be given the benefit of such exemption from liability. These considerations may be presumed to have been in the mind of either or both of the contracting parties, and to have induced the insertion in the protocol of the admission of liability.

The case, therefore, is one in which two nations who are presumably aware of this diversity of opinion among nations as well as between themselves as to the liability of governments for the acts of revolutionists enter into a solemn agreement containing an express admission of liability for *all wrongful seizures of or injuries to* property growing out of insurrectionary events in a civil war. Can there be any other conclusion than that they intended to settle themselves this question of liability and not leave it to be determined as a commission might decide, one way or another? Whatever strength the argument might have if there was the unanimity of opinion claimed, and therefore the admission of liability might be interpreted as a mere declaration of an existing uniformly recognized principle of international law, the argument fails when it appears in the case before us that there is a contrariety of opinion on the subject. Moreover, the well-recognized canons of construction prohibit a restricted interpretation of this article. It is a uniform rule of construction that effect should be given to every clause and sentence of an agreement. The result of the construction insisted upon by the Commissioner for Venezuela would be to give the same meaning to the German protocol and to those of the peace powers, in effect striking out Article III. It is a conceded principle of interpretation that an admission is taken most strongly against the party making it. (Vattel, above quoted.) Finally, it is a rule of construction of treaties, sustained by the highest authorities, that if a clause in a treaty is susceptible of two interpretations, one broad and the other restrictive, the courts will give the clause the former interpretation in favor of private rights. In the case of Shanks *v.* Dupont (3 Peters, 242, 250) the Supreme Court of the United States, in construing the treaty of the United States with Great Britain of 1794, confirmed this rule. Mr. Justice Story delivered the opinion of the court. In it he said:

> If a treaty admits of two interpretations, and one is limited and the other liberal, *one which will further and the other exclude private rights*, why should not the most liberal exposition be adopted? * * * This part of the stipulation, then, being for the benefit of British subjects who became aliens by the events of the war, there is no reason why all persons should not be embraced in it who sustained the character of British subjects, although we might also have treated them as American citizens. * * * In either view of this case, and we think both are sustained by principles of public law, as well as of the common law, and by the soundest rule of interpretation applicable to treaties between independent states, the objections taken to the right of recovery of the plaintiffs can not prevail.

The rule is again affirmed by the same court, speaking through Mr. Justice Swayne, in this language:

> Where a treaty admits of two constructions, one restrictive as to the rights that may be claimed under it and the other liberal, the latter is to be preferred. (Hauenstein *v.* Lynham, 100 U. S., 483.)

The principle was recognized by the Commission under the United States and Venezuelan convention, in Aspinwall *v.* The United States of Venezuela. The Commissioner (Little), speaking for the Commission, says[a] this doctrine—

---

[a] Moore's Arbitrations, 3624.

is thoroughly embedded in the jurisprudence of the United States, and is believed to be, internationally, a sound one. * * * [And] this finds support, if any were needed, in what Grotius says: "In the things which are not odious, words are to be taken according to the general propriety (totam proprietatem) of popular use, and, if there are several senses, according to that which is widest." (De Jure Belli ac Pacis, book 2, chap. 16, par. XII.)

In discussing the language of the treaty of 1819 between the United States and Spain, which it was contended did not include claims on torts, Mr. John Quincy Adams, Secretary of State, referring to the fact that in the course of the negotiations a proposal was made to omit the renunciation which included the latter class of these claims, said:[a]

As there is no limitation in the words of this renunciation, with regard to the nature of the transactions in which the claims originated, whether by contract or by tort, so none was intended. They were claims, of all of which it was believed that the only possible chance of obtaining any satisfaction to the claimants, consisted in the execution of the treaty.

It has been suggested that this interpretation will extend the liability of Venezuela to all injuries, because the word "wrongful" does not precede the word "injury;" that the clause must in that case be read "The Venezuelan Government admit their liability where the claim is for *any injury* to property," whether accidental or justifiable. Even if the word "injury" is taken in its generic or popular sense, the umpire is of the opinion that this interpretation is forced and untenable. The word "injury" when used in a legal or moral sense involves intentional wrongdoing.

"Injury in morals and jurisprudence is the intentional doing of wrong." (Fleming, Webster's Unabridged Dictionary, "injury.")

Again it is suggested that the word "wrongful" must be interpreted by reference to international law, and that Venezuela admits liability only for those seizures and injuries which are wrongful in the light of international law. This is incorrect. The admission is confined to property rights and must be read in that connection. It clearly means that the injury or the seizure shall be wrongful in respect to the right of property of the owner—*his title to the property*—and that any act which violates that right is wrongful. This right of property or title must be decided by municipal or local law, because it is derived from and is conferred by that law. One does not derive his title to property in any country through international law, but through the local law of the country. That law confers, permeates, and restricts his title. He takes his title subject to any and all the qualifications and limitations of the local law at the time of its acquisition.

It is also suggested that if Venezuela is held liable for injuries caused by the acts of insurrectionists, it will tend to discourage future revolutions. If the suggestion were pertinent, it might be possible to argue the opposite result; that, in the language of an eminent representative of the United States, "revolutions might then become a pastime for foreigners." But it is not pertinent. The functions of the Commission are strictly judicial. They have nothing to do with questions of statecraft and diplomacy. Their simple duty is to determine the rights of the parties according to justice and equity. They must not be influenced in reaching their conclusions by theories or predictions as to the possible effect of their decisions upon the political future of Venezuela. It is none of their concern. Fiat justitia ruat cœlum.

---

[a] Moore's Arbitrations, 4504.

In view of these considerations, the umpire is of the opinion that the admission of liability in Article III extends to claims of German subjects for wrongful seizures of or injuries to property resulting from the present Venezuelan civil war, whether they are the result of acts of governmental troops or of Government officials or of revolutionists.

This, however, does not dispose of the entire question. First, the admission of liability in Article III does not include injuries to the person; it covers only seizures of or injuries to property. Second, of these it only includes those resulting from the present Venezuelan civil war. The liability in these two classes of claims must be determined, therefore, upon the general principles of international law, because under the language of the protocol, read in the light of the British and German memorandum of December 22, 1902, *they* are referred to "arbitration without any reserve."

In thus determining them it is not, however, necessary to discuss the general question of the character and extent of the liability of a nation for acts of insurgents. There is diversity of opinion among the authorities on the question.

In the opinion of the umpire, however, the modern doctrine, almost universally recognized, is that a nation is not liable for acts of revolutionists when the revolution has gone beyond the control of the titular government. It is not necessary that either a state of war, in an international sense, should exist or any recognition of belligerency. Immunity follows inability.

This rule was very recently affirmed and approved by the United States Spanish Treaty Claims Commission sitting at Washington April 28, 1903 (Opinion No. 8).

Judicial cognizance can properly be taken of the condition of Venezuela during the present civil war. And there can be no doubt that from its outset it went beyond the power of the Government to control. It was complicated by the action of the allied powers in seizing the forts and war vessels of Venezuela; and if it is now fully suppressed (as is to be hoped), its extinction was only within a few days past. During all this period considerable portions of the country and some of its principal cities have been held by revolutionary forces. Large bodies of organized revolutionist troops have traversed the country, and in their train have followed the usual marauding and pillage by small bands of guerrillas and brigands. The supreme efforts of the Government were necessary and were directed to putting down the rebellion. Under such circumstances it would be contrary to established principles of international law and to justice and equity to hold the Government responsible.

It only remains to apply these conclusions to the particular claims submitted for decision.

The claim of Otto Kummerow is for property taken by the revolutionists from his residence in Naguanagua in May, June, and July, 1902.

It is specially objected to by the Venezuelan Commissioner on the ground that the testimony is insufficient to establish it, because the witnesses are servants on the claimant's farm and are so ignorant that they can not sign their names; that their testimony is word for word the same, and their appraisals of the value are precisely alike. From these facts he urges that their testimony is not to be received. He also claims that the time and other circumstances of the occurrence are too generally stated, and that the entire list of articles taken are

said to have been taken in the course of three months, without any specification as to the dates or the number of seizures or as to what articles were taken at each seizure. He further objects that there is no evidence of any violence or even that they were taken without the consent of the owner, and finally that the acts were committed by revolutionary guerrillas as shown by the character of the acts mentioned. In reply to the last objection the Commissioner for Germany insists that the witnesses testified expressly that they were revolutionists and give the names of their officers. No reply is made by him to the other objection to the credibility of the witnesses.

In the opinion of the umpire the proof fails to make out a case. While he can not agree with the argument of the Commissioner for Venezuela that the witnesses are to be discredited because they are ignorant farm hands or servants, the vague generality and at the same time verbatim identity of their testimony mark the case as one which might easily be manufactured.

In view of these facts, and the further fact that as to many of the articles it is obvious that the witnesses were not competent judges of their value, the umpire is compelled to disallow the claim for lack of sufficient proof.

Certainly if evidence of this character is to be received, there would seem to be no protection whatever for Venezuela as against manufactured claims, and it is significant in this connection that the claimant claims to have gone to considerable expense in the employment of an attorney, whose first and natural duty should have been to have presented the case of the claimant in a more satisfactory manner.

The first item of the claim of Otto Redler & Co. is for 9,932.85 bolivars, for the sacking of their store on the 26th of June, 1902, by revolutionists under the command of Gen. Lidano Mendoza.

The injuries occurred during the siege of Barquisimeto, which lasted from the middle of June, 1902, until June 26, when the revolutionists occupied the city. The house of the claimants was occupied by forces of the revolutionists under the command of Col. Manuel R. Vilaro, whose troops by night and day took away many articles of gold, hardware, and brass ware.

The proof seems to be complete as to the taking of the articles and the fact of the sacking of the store, and a district judge who took the testimony certifies that he has carefully examined the books of the firm, and the balance sheet shows the loss of 9,932.85 bolivars as correct.

This item of the claim falls within the ruling of the umpire upon the liability of Venezuela under her admission in Article III of the protocol.

The second item of 7,647.68 bolivars is for goods supplied the revolutionary forces under General Crespo, and it is not disputed that the government established by General Crespo, of which he was the constitutional President, acknowledged the claim. It is claimed, however, in defense of this item that the claimants were aiding the revolutionists by supplying them with munitions of war, and that having been shown thereby to have been revolutionists they have forfeited their claim. While, on the other hand, it is contended on the part of Venezuela that the authority of the revolutionary committee, upon whose action is based the third item of the claim for 3,732 bolivars, is not shown. It is further contended, as to the second item of 7,747.68 bolivars, that Venezuela offered to pay the claimant in bonds or evi-

dences of debt, and that the claimant should have taken it, and not having done so can not now assert his claim.

The umpire is of the opinion, first, that it does not clearly appear that the claimant knew, in the case of one of the sales at least, that the purchasers were revolutionists. But in his judgment this whole claim of defense is disposed by the fact that these revolutionary forces were successful, and that Venezuela is estopped to refuse compensation for goods received from the claimants which materially assisted in the establishment of the Crespo government, whose title was never attacked. They are likewise estopped from claiming any pains or penalties or forfeitures against foreigners on the ground that the foreigners assisted the Crespo party in obtaining possession of the government.

The third item of the claim of 3,732 bolivars is based upon the same fact as the second, although it does not clearly appear whether this item of the claim was recognized, as the second was, by the decree of the Crespo government. The same objection therefore obtains against the claim of defense to this item.

The umpire can not agree with the position taken on behalf of Venezuela that the claimants were bound to take bonds of Venezuela in payment of their claim. Even if the Government had tendered them cash in payment of their claim and the tender had been refused, its only effect would be to stop interest. But certainly if Redler & Co. had a claim, as has been adjudged, they were not bound to take in satisfaction thereof anything but cash.

It results, therefore, that the claim of Redler & Co. will be allowed for the full amount claimed, namely, 17,050.05 marks, with interest at 3 per cent per annum from the time of the presentation of the claim to the Commission up to and including the 31st day of December, 1903.

The claim of Luis Fulda is for property taken, a portion by "Venezuelan forces under the command of Gen. Nicolás Rolando" and a portion by forces of General Matos. Both the Commissioners, however, agree that the property was taken by revolutionary forces. Neither the fact nor the amount of the damage is denied by the Venezuelan Commissioner. It nowhere appears in the evidence when these injuries happened, but in the brief of the Venezuelan agent it is stated as a ground of defense that the international conflict, meaning the seizure of the war vessels and ports of Venezuela by the allied powers, had commenced at that time. This statement is not denied by the Commissioner for Germany.

The claims therefore fall within the above ruling of the umpire as to the extent of the admission of liability by Venezuela for acts of insurgents growing out of the present civil war, and as there appears to be no dispute as to the amount, it will be allowed at the sum of 5,000 bolivars, with interest at 3 per cent per annum from the date of the presentation of the claim to the Commission up to and including December 31, 1903.

The claim of Max Fischbach is for 19,200 marks for gross personal injuries committed by bands of revolutionists on October 24, 1902, in Los Azufrales, in Carúpano. They took away from him his watch and kept him until some friends came along and ransomed him and his fellow-sufferer Friedericy by the payment of 10 pesos. On the day of making the declaration of his claim, November 20, 1902, he alleges that he was still suffering from the effects of his injuries.

The claim of Richard Friedericy is based on practically the same assault by the same parties, because he protested against the treatment of Fischbach. He claims he was recovering from a rupture and his treatment brought back his troubles, from which he was still suffering on November 20, 1902. He claims the same amount, 19,200 marks.

These two claims are not within Venezuela's admission of liability, save as respects the watch taken from Fischbach, as to the value of which no evidence is given and no specific claim made, and the money taken from them both.

The claims for personal injuries will be, therefore, disallowed, and each claimant awarded the sum of 5 pesos, with interest at the rate of 3 per cent per annum from the date of the presentation of their claims to the Commission up to and including December 31, 1903.

The umpire is under appreciated obligation to the commissioners for their painstaking and able expositions in presenting the important questions arising in these cases.

VALENTINER CASE.

Damages for loss of crop because laborers who were hired to gather it were drafted by Venezuelan troops held to be remote damages and disallowed.

Costs of preparation for suit also disallowed.

Damages occasioned by revolutionary troops allowed because of admissions in protocol.

Where constitution provides against drafting of Venezuelans for army except upon previous proclamation as to the portion of the territory in which guaranties of constitution are to be suspended, the draft held to be presumed to have been legal in the absence of any proof that such proclamation was made.

Opinion of witnesses as to nationality of persons incompetent evidence.

DUFFIELD, *Umpire:*

The evidence in this case satisfactorily establishes that on the 22d of December, 1901, a detachment of Government troops, under the command of Capt. Pedro Gonzalez, sent out by the jefe civil of Guarenas with orders to recruit soldiers, came to the coffee hacienda, "La Hondonada," owned by the claimant. The laborers, who were taken away by the force, were 63 Venezuelans, and also some foreigners. They had all been hired under valid contract by the agent of the claimant to pick the crop of coffee on the hacienda, which was then ready to gather. The superintendent of the hacienda informed the officer in command of the patrol of these facts, and that if the men were taken away the crop would be lost, to which the officer answered that he must obey orders. It is also satisfactorily established by the evidence that it was impossible to secure new men for twenty-five days after the draft, even in Caracas, and that during this time a great part of the coffee ripened and fell and was lost, the amount so lost being more than 400 quintals, which the testimony shows was worth 45 bolivars a quintal.

The Commissioner for Germany is of the opinion that the claimant is entitled to recover the amount. He is also of the opinion that the claimant is entitled to damages for four huts burned by the revolutionists of the Matos revolution, worth 800 bolivars, and for legal expenses in the matter of preparation of his claim for presentation, 312.60 bolivars.

The Commissioner for Venezuela differs in opinion with the Commissioner for Germany, and is of the opinion that there can be no recovery against Venezuela for the loss of the coffee crop. He does not refer in his opinion to the destruction of the huts or to the question of legal expenses, but he admits that Venezuela should pay for the value of a mule which the claimant alleges he lost, and 50 pesos which the claimant asks for wood burned by the forces of the Government.

It is argued by the Commissioner for Germany, in support of the claim for loss of the coffee crop, that the recruiting officer had no authority to take from the plantation either Venezuelan or foreign laborers, and that such taking was "usurpation of the rights of the claimant," and that, inasmuch as the testimony shows clearly that claimant could not for twenty-five days replace the laborers who were so illegally drafted, the loss of the crop was a natural and proximate consequence of said illegal draft.

In opposition to this position, the Commissioner for Venezuela insists that the evidence shows the drafting of the 63 Venezuelans and only 6 foreigners, so called; that the Venezuelans were liable to draft, and that there is no evidence of the foreign citizenship of the so-called foreigners, and that there is no evidence that the so-called foreigners did not gather the coffee, meaning that there is no testimony showing how long they remained away from the plantation, and there is some testimony that some of them returned very shortly; and, finally, that the loss of the crop is an indirect damage, and remote and consequential.

The umpire is of the opinion that under the testimony in the case the loss of the crop is not a proper element of damage. It is extremely doubtful, in his opinion, whether it would be even if all the laborers who had been engaged to gather it had been illegally taken from the plantation.

It has been held repeatedly that the loss of future crops is too remote to constitute an element of damage where the owner was prevented by the wrongful act of another from planting and harvesting them. So, too, where the seller of an agricultural machine fails to deliver it within the time stipulated, it is held that the loss of crops through the deprivation of the use of the machine is not a proper element of damage against him. Also, where the owner of a crop is deprived of an animal with which to harvest them. But it does not appear in this case whether the deprivation of an animal was by a tortfeasor or because of a breach of contract.

The same is held where the crop is lost by the loss of a servant or a slave. But it is, however, held in the latter case that where the owner of the crop can procure no other assistance he may recover compensation for the loss. (Sedgwick on Damages, Vol. I, p. 298, sec. 202, and the cases cited.) And it was held in McDaniel *v.* Crabtree, 21 Arkansas, 431, that where the defendant wrongfully seized the plaintiff's negro the profits of a crop plaintiff expected to plant and cultivate by means of the negro were too uncertain to afford ground of recovery.

On the other hand, in an action of contract, it was held in Louisiana, in which the civil law obtains, that on the failure to deliver a sugar mill the purchaser may recover compensation for the crop lost. (Goodloe *v.* Rogers, 9 Louisiana Annual, 273.)

In Sledge *v.* Reid, 73 North Carolina, 440, the defendant wrongfully seized the plaintiff's mule, which the latter intended to use to cultivate his crop. The loss of his crop was held both too uncertain

and too remote for compensation. But Mr. Sedgwick says of this case (Sedgwick on Damages, vol. 1, sec. 191):

> If the mule were intended to be used for the harvesting of a crop already matured, the loss would not be too uncertain.

Access can not be had to these cases cited to ascertain the condition of the crops at the time of the injury or breach of contract. But in the case here presented there are so many elements of uncertainty dependent upon conditions of weather, health, and industry of laborers preparing the crop for shipment and transportation, and ultimate realization on the crop, that the umpire is inclined to the opinion that the damage would be too remote.

However, the number of so-called foreigners drafted, at most only six, less than 10 per cent of the number of the Venezuelans drafted, will not warrant the charge against Venezuela if the draft of the Venezuelans was legitimate.

It is claimed by the Commissioner for Germany that under article 17, paragraph 5, of the constitution of Venezuela, the 63 Venezuelans were not legally liable to draft. On the other hand, the Commissioner for Venezuela insists that according to article 89, paragraph 20, subdivision 7, and paragraph 21, such draft was legitimate. To this the Commissioner for Germany agrees, provided that the previous declaration, required by subdivision 7 of paragraph 20 of article 89, had been made affecting the territory in which the plantation "La Hondonada" was situated, but he insists that such previous declaration is not proven, and that in the absence of that proof it must be presumed that the draft in question was contrary to the constitution and illegal.

The umpire can not agree with this latter contention. It being conceded that given the prerequisite of an antecedent declaration of suspension of the constitution, embracing the locus in quo, the draft would be legal, the umpire is of the opinion that under the general presumption of law, in the absence of any testimony to the contrary, the draft must be considered lawful. Omnia rite acta præsumuntur. This universally accepted rule of law should apply with even greater force to the acts of a government than those of private persons. Moreover, it seems at least doubtful whether the provision in subdivision 7 of paragraph 20 of article 89, read in connection with paragraph 21, is mandatory and not merely directory.

Furthermore, the evidence does not satisfactorily establish the nationality of the so-called foreigners. Certainly the testimony of the witnesses in their depositions taken under the commission, does not prove the fact, except as to Beauregard, who testifies as to his own nationality. The opinion of witnesses as to the citizenship of an individual is clearly incompetent to prove the fact. The letter attached to the "expediente," even if admissible in evidence, which is doubtful, because unsworn to and unauthenticated, and the signatures of Serrano, Mosquera, and Pereira not proven, is open to the same objection.

It results, therefore, that the proof fails to make out a case of illegal draft of any of the laborers of the claimant, except Beauregard; but as to him the proof shows he was absent from the plantation but a short time, and there is nothing in the evidence from which the amount of the value of his services, over and above his wages, can be computed. This item of the claim must be disallowed.

The item of legal costs and preparation of his claim for presentation is also disallowed.

As a general rule, costs and expenses of litigation, other than the usual and ordinary court costs, are not recoverable in an action for damages, nor are such costs even recoverable in a subsequent action.

Accordingly, it has been held that the mere fact that a party deems it necessary to resort to law to enforce or protect his rights does not, in general, give him the right to recover as damages the fees he may have paid legal counsel in the cause,[a] in the absence of a contract stipulation therefor, or provision of statute permitting. (American and English Encyclopedia of Law, 2d ed., Vol. VIII, p. 673.)

It results from these conclusions, therefore, that the claimant can only be allowed for the value of four huts burned, 800 bolivars; and wood, also burned, 50 pesos; and a mule taken by revolutionists, 160 pesos, aggregating 1,640 bolivars, with interest from the date of the presentation of the claim, July 1, 1903, to up to December 31 proximo, inclusive, at 3 per cent per annum.

VAN DISSEL & CO. CASE.

(By the Umpire:)

Meaning of the words "present Venezuelan civil war."
Venezuela not liable for revolutionary damages under principles of international law.

GOETSCH, *Commissioner.*

The Commissioners agree that on July 30 and 31, 1901, a detachment of troops under the orders of Gen. Juan Marquez confiscated from the claimant firm 158 mules, of which there were afterwards returned to the house 43, 9, 3, and 4—in all 59—so that there was a loss of 99 animals (6 saddle mules and 93 pack mules).

They disagree (*a*) upon the question whether Venezuela is responsible for the loss, (*b*) the Venezuelan Commissioner denies the responsibility of Venezuela:

First, because there is question of an invasion of Colombian troops; and, second, because there is question of an incident which ought not to be considered, "as of the last civil war," in the sense in which the decision of General Duffield gives to this phrase.

I. The political event upon which the claim is based forms an epoch in the revolution against President Castro—an epoch which the honorable umpire describes in his personal opinion relative to the historical events in Venezuela, as follows:

In July, 1901, General Ránjel Garbiras, as provisional leader of the Nationalist party during the imprisonment of General Hernandez, organized an army of about 4,000 Venezuelans and troops of the regular army of Colombia and invaded Táchira by way of Encontrados and overland to the city of San Cristóbal.

A detachment of these troops under the orders of Juan Marquez marched to the north and committed various depredations along the route to Encontrados, and at this last-named place also. Amongst others this detachment sacked, on July 27, 1901, the mercantile establishment "El Finglado," belonging to the firm of Christern & Co., and, moreover, they confiscated the mules mentioned in the claim of Van Dissel & Co. It is clear from every point of view, according to what has been stated, that there is no question of a warlike attack on the part of Colombia, but of a revolutionary uprising of Venezuelans.

[a] Flanders *v.* Tweed, 15 Wall., 450; Day *v.* Woodworth, 13 How., 363; Arcambel *v.* Wiseman, 3 Dall., 306.

who had fled into Colombian territory and lived in the frontier districts. They were the "Nationalistas," partisans of General Hernandez, and authors of the movement. The generals in chief, Rangel Garbiras, Juan Marquez, and Trinidad Zuleta, are Venezuelans. It is not impossible, and it is even probable, that among the invading revolutionists there were some Colombians, which in no way modifies the fact that there was question of a revolutionary movement of Venezuelans, who perhaps in attending to their own interests and political outlook, knew how to attract some Colombians to their flag. It has not been alleged or proved that the Colombian Government had any knowledge of the invasion, and even less that it had set it on foot. This is the view taken by the Government of Venezuela, who replied to an inquiry of England (see the English Blue Book, p. 55) on the 20th of November, 1901—that is to say, that at the root of the invasion of Garbiras there was not a state of war existing with Colombia. Venezuela would not have received quietly a warlike attack from Colombia and would have replied to its neighbor by warlike measures. In the case of Christern & Co. the Commissioner of Venezuela has taken for granted that the act was committed by Venezuelan revolutionists. Since there is question of the same time, of the same troops, and of the same generals, it can not be seen why the authors of the deed could have suddenly become Colombian troops as against Messrs. Van Dissel & Co. Besides, all the witnesses testify that they were Venezuelan revolutionists.

II. As is seen from a study of the protocol of February 13, 1903, the Government of the German Empire took exclusively upon itself the adjustment of the claims arising out of the civil war of 1898–1900, or, say, the revolution organized at the time when Castro was seeking power, and, as far as they were at that time presented, held them to be fixed (Art. II), while the other claims, especially those arising out of the last civil war, were submitted for their decision to the Mixed Commission (Art. III). The German Commissioner has not the least doubt that under the term "last civil war" the revolutionary movements organized *against* President Castro ought to be included, the consequences of which have not yet been adjusted. It is this and nothing else which was intended to be expressed. Since how can it be supposed that the Government of the German Empire could only have had in mind the Matos revolution, and that there could not have entered into its scheme the demand of satisfaction for the other damages which had occurred in the intermediate interval? (That is to say, from the time that Castro assumed power up to the uprising of Matos.) It was its idea to clear the table (to liquidate), and that all the claims of German subjects not adjusted up to date should be decided by the Commission.

There is no doubt that this was the intention of the Government of Venezuela. The same reason supports the interpretation that of the revolution and revolutionists against General Castro, enumerated one by one by the honorable umpire and of the individual existence of which perchance the German Government did not have notice, were united by the German and Venezuelan Governments under the term "last civil war." If the opinion of the Venezuelan Commissioner is to be considered correct, according to which only the uprising of Matos should be considered as "the last civil war," this interpretation would in no way modify, because of its slight importance, the judgment of

the German Commissioner, who would demonstrate the liability of Venezuela in the present case by a different sort of reasoning.

The first paragraph of article III says:

> The German claims not mentioned in the Articles II and VI, in particular the claims resulting from the present Venezuelan civil war, * * * are to be submitted to a mixed commission.

The words "in particular" show that outside of the claims of the "last civil war" ready to be submitted to the jurisdiction of the Commission all those claims remaining which have not yet been adjusted; that is to say, in a given case also the claims for the intermediate period (until the uprising of General Matos). The German Commissioner understanding until now that these claims refer to claims for the failure to fulfill agreements, or claims during the period prior to 1898, but at the same time he asserts that in case the interpretation of Dr. Zuloaga should be correct, there shall be included also claims which bear no relation to the revolution of Matos, but to the revolutions of the intermediate time (Hernandez, Garbiras, Paredes, Peraza, and Acosta).

The second paragraph of Article III refers entirely to the first paragraph. If in the second paragraph the Government of Venezuela has recognized in principle its responsibility with relation to claims for damage to or illegal confiscation of property, its admission refers to the claims of which the first paragraph of Article III speaks—that is to say, to those German claims not mentioned in Articles II and VI—therefore, *in particular* to the claims of the present civil war, to those of the *intermediate interval*, and, therefore, to the claims arising out of the invasion of Garbiras and Vargas. Therefore, in the present case also, the liability of Venezuela should be fixed, being based upon contracted obligations.

III. The German Commissioner can not estimate by his own experience the value of the animals confiscated. He must bear in mind the sworn statements of the witnesses, who are agreed that the prices mentioned are reasonable.

Besides, the firm of Van Dissel enjoys such a reputation for honesty and respectability that it is not to be supposed that they would demand false or exaggerated prices. Add to this that the mountain mules must be selected animals of great strength in order to resist the fatigue incident to an exceptionally mountainous and muddy region. Finally, it is necessary not to lose sight of the fact that the house suffered a considerable indirect damage because of the confiscation of the animals (as all the witnesses testify) and that the direct damage will require many years to be liquidated. All this should be taken into account in valuing the mules.

The prices indicated by the Commissioner of Venezuela are not in the first place sworn to, and besides they are given by individuals who did not know the animals in question, while the sworn witnesses ought to have known the exact value of them. Lastly, the prices refer to regions which are not in the mountains of Maracaibo, the high price which is paid in the mountains for mules being well known.

The German Commissioner therefore asks that the honorable umpire shall award the claimant firm the whole of the sum claimed, amounting to 51,000 bolivars, together with interest at 3 per cent per annum from the date of the presentation of the claim to December 31, 1903.

ZULOAGA, *Commissioner:*

Van Dissel & Co. make claim for 100 mules, which they say the troops of a commander, Juan Marquez, took on the 30th and 31st days of July, 1901, in a pasture field near El Azufre, in the jurisdiction of Michelena, State of Los Andes, and that they took them to Colombia via San Faustino. This claim is based upon acts of an obscure origin, with which the Government of Venezuela charges the Government of Colombia, since it was an invasion of the territory of Venezuela by revolutionary forces which, generally speaking, were battalions of the Colombian army, as appears even from the deposition itself presented as the testimony of the witness, David García. I do not understand how, under these circumstances, liability can be attached to the Government of Venezuela.

Nor even in the case that this act against the property of Van Dissel & Co. could be considered as the work of an internal revolution would the Government of Venezuela be liable, since it is an act of revolutionists, and besides, according to the interpretation given to the protocol by the honorable president of the Commission, the admission of the liability of Venezuela for acts of revolutionists is limited to the *present war*, which can not be any other except that which had for its leader Gen. M. A. Matos, a political movement perfectly well defined and distinct from every former revolution. I therefore reject the claim upon its merits; but it is also to be observed that mules, in the poor state which those which are the subject of this claim were, are not worth more than 80 pesos, or, say, 320 bolivars, as may be learned from the statements of informed people. The value of things at current prices should naturally govern the arbitrators, and with relation to them they are not to be governed by the declaration of witnesses who are set up as experts. Moreover, in the matter of experts it is universally determined that the judge is at full liberty to accept the valuation or not, and a judge of equity has that right all the more.

DUFFIELD, *Umpire:*

The claimants in this case base their claim upon injuries to and seizures of property belonging to them at their farm, El Azufre, in the jurisdiction of Michelena, State of Los Andes, by the troops of General Garbiras in July, 1901.

The Commissioner for Germany is of the opinion that the acts complained of occurred during the present Venezuelan civil war, as described in the protocol, while the Commissioner for Venezuela insists that these words in the protocol embrace only the so-called Matos revolution, which originated in or about December, 1901.

The importance of a correct interpretation of the words "present Venezuelan civil war" is self-evident. To arrive at a proper interpretation of them it is material and necessary to ascertain the political situation in Venezuela at and prior to the execution of the protocol. The following statement of the various revolts against the Government, which was established in October, 1899, by General Castro, is accepted as substantially correct by both Commissioners.

General Castro entered Caracas October 22, 1899; assumed power October 23, 1899, as "director y jefe de la revolución restauradora." Shortly thereafter he declared himself "supreme chief of Republic" and appointed a cabinet.

General Hernandez on October 27, 1899, secretly left Caracas, and on October 28, 1899, issued a manifesto against the Castro government. He was defeated and captured and imprisoned until December 11, 1902, when he was released and came to parley with (then) President Castro.

Gen. Antonio Paredes, military governor of Puerto Cabello, initiated a revolt in November, 1899, but on November 11 and 12, 1899, he was completely defeated, captured, and imprisoned until December 11, 1902.

December 14, 1900, Gen. Celestino Peraza issued a proclamation inciting an insurrection against the Castro government. There was no serious fighting, and he was soon defeated, captured, and imprisoned until December 11, 1902.

October 24, 1900, Gen. Pedro Julian Acosta revolted in Yrapa, and after a number of minor engagements in the States of Cumana and Margarita in February, 1901, he was captured and imprisoned and has not been released.

In July, 1901, General Garbiras, as provisional leader of the nationalist party during the imprisonment of General Hernandez, organized an army of about 4,000 Venezuelans and troops of the regular army of Colombia, and invaded Táchira by way of Encontrados and by roads to the city of San Cristóbal. A small skirmish took place at Encontrados July 28, 1901, which resulted in favor of the Government, but on the 28th and 29th he was defeated in a serious engagement at San Cristóbal, lasting from 2 p. m., July 28, until 4 p. m., July 29, between the main body of the Garbiras army and the Government troops under Gen. Celestino Castro, commander in chief of the army under appointment by General Castro.

August 8, 1901, another armed force invaded Venezuela from Colombia, via San Faustino, but was repulsed at Las Cumbres by Gen. Ruben Cardenas.

Finally, in February, 1902, Gen. Rángel Garbiras, with other leaders and a Colombian battalion of the line, again invaded Venezuela, via San Antonio, simultaneously with other officers from other points, but they were all defeated with heavy losses.

During the blockade Gen. Rangel Garbiras issued a manifesto early in 1903, abandoning his pretensions and being still a refugee in Colombia.

Gen. Horacio Ducharme, nationalist leader in the east, and his brother Alejandro joined in this movement from September 30, 1901, to the beginning of November, 1901, when the eastern section of the country was pacified.

In the beginning of October, 1901, Gen. Rafael Montilla revolted in the State of Lara and occupied Coro with a considerable army, but was defeated October 25, 1901, by Gen. Rafael Gonzales Pacheco, president of the State. He took refuge in the mountains of Guaito until the revolution of Matos gained head, when he joined it and participated until the end.

At the end of October, 1901, Gen. Juan Pietri issued a revolutionary proclamation, dated at La Sierra, Carabobo, although he had not then reached that point. He was almost immediately captured, brought to Caracas, and set at liberty in the Plaza Bolívar, while the revolutionists were routed at Guigue, in the State of Carabobo. Pietri again left Caracas by stealth toward the end of December, 1901, presumably

to join General Matos's army or raise his own standard, but he was again captured December 31, 1901, and imprisoned until the blockade, when he was released.

November 21, 1901, a number of citizens of Caracas, including Gen. Ramón Guerra, minister of war and navy, who had lent their support secretly to Gen. Manuel Antonio Matos, who was then in Paris stirring up and providing means for an insurrection, of which he was to be the head, uniting the liberal elements and the nationalists, whose leader, Hernandez, was still in prison in the fortress of San Carlos.

December 19 Gen. Luciano Mendoza, whose term as provisional president of the State of Aragua was drawing to a close, and who was supposed to be about to assume the constitutional presidency of Carabobo, went to Vil de Cura, gathering some 300 men whom he had gotten in readiness. He counted on various uprisings on the same day in Carabobo, Cojedes, Lara, and Coro, but Gen. J. V. Gomez pursued him with vigor and dispersed his forces at or near Cojedes, and drove him into hiding.

At the end of December, 1901, General Matos circulated a proclamation dated on board the *Libertador*, formerly the *Ban Righ*, and declared by the National Government to be a pirate vessel. The forces of Gen. Antonio Fernandez in Aragua and the rebels in Coro were defeated and destroyed; but early in January, 1902, bodies of revolutionists began to rise in the east, relying on the Matos support and that of the steamer *Libertador* with General Matos on board, which on the 7th of February, 1902, engaged and destroyed the national steamer *Crespo*.

February 14 Gen. Gregorio Riera landed at Cauca and issued a proclamation, and engaged in battle the Government troops under Gen. Ramón-Ayala. General Gomez came to his assistance and the revolutionists in Coro were annihilated.

As early as March, 1902, the eastern portion of Venezuela was in arms in support of the revolution. Gen. Domingo Monagas, in Barcelona, and Gen. Nicolás Rolando, in Maturín and Cumaná, commanded troops. They gained signal victories at La Sutela of Barcelona, March 27, San Augustin del Pilar on April 2, and Guanaguana April 22. Gen. Calixto Escalante, who conducted the military expedition in the east, was completely routed and with many officers was taken prisoner. Rolando occupied Carúpano and defeated General Gomez in a hard battle. General Matos then came to Carúpano and began his march to the center, via Maturín and Carúpano. Meantime, in Lara and Yaracuy, General Amabile Solagure had acquired strength and was enlisting support with southwestern states to the movement in connection with General Montilla in Lara and Generals Mendoza and Batalla in the west.

By this time the occupation of Ciudad Bolívar by Col. Ramón Farreras and his possession of the State of Guayana, after serious engagements at Ciudad Bolívar, San Felix, and other points, had occurred.

While the forces near La Guaira, in the valleys of the Tuy and the Guarico, had been organized in expectation of the coming army of the east in Coro General Riera obtained decisive victories which made him master of that state, and General Ayala was a captive in Barcelona.

During these events General Castro sent General Velutini to Barcelona to check the advance of General Matos's army, but the Government forces under Gen. M. Castro were defeated by the army of the

east under General Rolando. President Castro thereupon took personal command of the army, and on August 18, with a considerable army, started for San Casimiro, where he was joined by other troops, and moved rapidly to Cua, but removed to Ocumare because of the defection of the troops under Gen. P. Perez Crespo, and remained until the beginning of September, 1902, when he returned to Valencia to meet the revolutionist forces from the west, who, by a succession of victories, had control of the states of Coro, Barquisimeto, Cojodes, Portuguesa, and Yaracuy. In spite of General Castro's efforts to prevent it, the revolutionist armies united at San Sebastian, and he fell back to Victoria. The united armies of the insurgents here attacked him vigorously from October 13 to November 2, but were compelled by the strong defense to withdraw from the field, and Matos took passage for Curaçao. Many revolutionists then surrendered themselves and the Government regained its coast and interior towns.

But in January, 1903, a reorganization of the revolutionists was consummated with considerable forces in Critinuco and Barlereuto under General Ronaldo; in Guarico, General Fernandez; in Coro, Gen. Gregorio S. Riera; in Barquisimeto and Yaracuy, under Generals Peñaloza, Solaguie, and Montilla. And after the signing of the protocols with the allied powers, February 13 of the present year, the struggle began again. It was only finally quelled by the taking by General Gomez of Ciudad Bolívar in the closing days of the present month.

It is claimed by the Commissioner for Venezuela that the words "the present civil war" in the protocol must refer to the revolution of Matos (so called) only. Is this correct? It is, literally, because at the date of the execution of the protocol there was no other revolution actively and aggressively prosecuted. But may not the parties to the protocol have used these words in a broader sense to indicate all the revolutions which had broken out against the Castro government?

From this statement it appears that prior to the Matos revolution a number of separate and disconnected revolts occurred, most of them of comparatively small importance; two of them in the year 1899, two in 1900, and four, including the Garbiras insurrection, in 1901; but all of these, except the Garbiras movement, were almost immediately suppressed. Of these revolutions that of General Ducharme alone appears to have been in answer to the call of General Garbiras. Of the leaders in these separate revolts, General Hernandez, General Paredes, General Peraza, and General Acosta were captured, and except General Acosta, who is still a prisoner, were imprisoned until December 11, 1902, when they were released by the Venezuelan Government at the time of the blockade by the allied forces. General Ducharme, being hard pressed, reembarked for Trinidad in November, 1901.

The insurrection headed by Gen. Ramón Garbiras in July, 1901, was organized and set out from the neighboring Republic of Colombia, and contained many troops of the regular Colombian national army. It was believed by the Government of Venezuela, and so announced by it in a proclamation addressed to the other nations of the world, dated August 16, 1901, that there was either complicity on the part of the Government of Colombia or an entirely unjustifiable lack of effort to prevent participation in it by its regularly enlisted troops. Notwith-

standing the fact that General Garbiras had invaded Táchira by way of Encontrados, and thence by road had proceeded to the city of San Cristóbal with an army of about 4,000 Venezuelans and troops of the regular army of Colombia, on the 28th and 29th of the same month he was defeated in a serious battle at San Cristóbal by the Government troops under Gen. Celestino Castro, commander in chief of the Venezuelan army, and retired to Colombia. It was in this invasion that the injuries complained of occurred.

The so-called Matos revolution was announced by the proclamation of Gen. Manuel Antonio Matos in December, 1901, dated and issued on board the steamer *Libertador*, formerly the *Ban Righ*, then cruising in Venezuelan waters. She was denounced by a decree of the Venezuelan Government dated December 30, 1901, and in February, 1902, she engaged and destroyed the Government steamer *Crespo*. This proclamation, which was extensively circulated by General Matos, was the culmination of an agitation begun by him in Paris some months previously, looking to an extensive insurrection which he was to lead. He hoped to unite upon him as their leader the liberal elements and the followers of General Hernandez, called Natibnalistas, whose chief was still a prisoner in the fortress of San Carlos. To this end he had advanced liberally of his means, which were large, and had enlisted the support of the Venezuelan minister of war and navy and a number of the citizens of Caracas. He did not profess or declare any connection with a prior insurrection, or any intention to support the cause of any former leader, but to initiate and successfully carry through a new and independent revolution.

Yielding to public opinion, and attentive to the honor which a large number of my distinguished compatriots have conferred on me, by designating me in their generosity to lead this redemptory crusade, I hasten to comply, and to bring with me the necessary elements of war to strengthen your desires, render them irresistible, and at the same time to serve as a tie of union to all Venezuelans, in order to save our beloved country from ruin. (From Venezuelan Herald of December 31, 1901.)

Through the entire period of December, 1901, until his defeat and proclamation of peace, from Curaçao, whither he had fled after his defeat in June, 1903, there is no indication whatever that the movement he was conducting had the slightest connection with any of the previous revolts. Although he naturally hoped and probably expected to bring together all the dissatisfied elements in the Republic under his banner, it was with a like hope and expectation that they would abandon their former chiefs and adopt him as their leader.

None of these former revolutions compared with the Matos movement in importance or in their chances of success. None of them were still active. All of them had been suppressed. And with the exception of the followers of Hernandez, who was himself in prison, there were no considerable numbers of organized revolutionists. All of their chiefs were imprisoned. General Garbiras only avoided imprisonment by flight into Colombia.

It appears, therefore, that at the time of the signing of the protocol there was no existing civil war with any leader or any organization save that of Matos, and that all previous revolts had been put down by August, 1901, except the comparatively insignificant movement of General Ducharme, Nationalist leader in the east, which existed from September 30 to the beginning of November, 1901, at which date the entire eastern section of the country was pacified, and two small

desultory events, one by Gen. Rafael Montijo, in the State of Lara, which was quelled in a few weeks by the president of that State, and one by General Pietri, who was defeated and captured before he reached the point from which his proclamation of revolution was dated, and his followers at the same time routed at Guigue, in the State of Carabobo.

If there were any connection shown between the Matos revolution and these prior ones, there would be much force in the argument of the Commissioner for Germany that the high contracting parties had in contemplation, by the words "present Venezuelan civil war," all the insurrections against the Castro Government, but in the light of the facts stated above it clearly appears that the Matos revolution was independent.

Taking the words in their literal sense, in which they must be interpreted unless some special reasons require otherwise, they refer to the one civil war then pending in Venezuela.

The umpire is therefore of the opinion that the admission of Venezuela in the protocol of liability for injuries to and wrongful seizures of property does not embrace the insurrection headed by General Garbiras, in which the claimant suffered from acts of revolutionists. It is true that in February, 1902, General Garbiras, with other leaders and 4,000 soldiers, including the Colombian battalion of the line, again invaded Venezuela, via San Antonio, simultaneously with forces from other points, but they were all defeated very soon after.

As to this claim, therefore, the liability of Venezuela must be determined by the general principles of international law, and under them the umpire is of the opinion that no liability exists.

As has been shown above, the forces which committed the injuries in this case were composed in large part of the national troops of Colombia; that the expedition was organized in Colombia; that the Government of Venezuela had no warning from Colombia of its preparation and no reason to expect it, because her relations with Colombia were then friendly and included an interchange of diplomatic representatives; that the expedition penetrated only a short distance into Venezuela, coming by way of Encontrados by water, with San Cristóbal as its objective point, and that the Government took such prompt and vigorous means in opposition to it that, although General Garbiras had an army of some 4,000 men, many of which were the trained troops of the Colombian regular army, he was defeated and driven out of the country in less than a month.

Even if the question is to be answered upon the assumption that it is the duty of a government to protect foreigners absolutely from acts of revolutionists by preventive measures, and it is doubtful if the rule goes so far, Venezuela can not be held liable here, because the uprising did not begin in her territory, but in a neighboring state, which gave it immunity from any surveillance or repression, if not a fostering support.

Under these circumstances, in the opinion of the umpire, it would be contrary to justice and equity and at variance with the principles of international law to hold Venezuela liable in this case.

It is not intended by this opinion to decide that Venezuela may not be liable for acts of revolutionists in an insurrection prior to the Matos movement, where that insurrection is shown to be associated with and a part of that movement.

It results, therefore, that the claim must be disallowed.

MOHLE CASE.

Damages occasioned by revolutionary troops allowed because of admissions in protocol.

Doubt expressed by umpire whether he can accept statements of revolutionary authorities who are not experts or agents of the Government as to value of property taken.

Evidence as to values of like articles in another case before the Commission followed by umpire in the fixing of prices.

DUFFIELD, *Umpire:*

In this claim the Commissioners differ in opinion. The acts upon which it is based occurred during the revolution of General Matos, and the injuries complained of were done by his troops. Under the decision of the umpire in the case of Kummerow, the Government of Venezuela is liable by reason of its admission of liability in the protocol, the Matos revolution being embraced in the present civil war.

The Commissioner for Venezuela, while denying the liability of Venezuela, admits the committing of the injuries, but insists that the values of the property are exaggerated by the claimant, and contends that if Venezuela is liable it is only for 11,923.72 bolivars, for the reason that the appraisal of values made by the revolutionist officials who took the property can in nowise bind Venezuela and is no evidence of value. But the Commissioner for Germany, while admitting that they do not conclude Venezuela, insists that they are competent evidence of value, and is of the opinion that the full amount claimed should be allowed.

The Commissioner for Venezuela lists the articles taken at what he says are current prices, and is of the opinion that if any award is made it should be on this basis.

The umpire is of the opinion that, perhaps, under the Fennerstein Champagne cases, in the Supreme Court of the United States,[a] current prices are admissible in evidence. But there is, in his opinion, much force in the objection made by the Commissioner for Germany as to their accuracy in the appraisal of such property as is here in question. Moreover, the current prices which the Commissioner for Venezuela mentioned are not verified by price lists or any other evidence.

On the other hand, the umpire is extremely doubtful whether he would be authorized to follow the appraisal made by the revolutionist officials, who are not agents of Venezuela, and not shown to be familiar with the value of any of the property, except, perhaps, the horses. In this uncertainty he deemed it entirely proper to refer to the evidence put in the claim of Van Dissel by the Commissioner for Venezuela, stating the values of property of like character with that the values of which are disputed in this case. The competency of this evidence was not questioned by the Commissioner for Germany in that case.

Upon this basis the claimant will therefore be allowed for his items of damage as follows.

The following items the values of which are undisputed:

	Bolivars.
Fence	1,200.00
1 saddle horse	800.00
Medicine	158.00

[a] 3 Wall., 70 U. S., p. 145.

	Bolivars.
1 horse	180.00
Medicine	74.52
Do	166.00
Do	44.00
Do	197.60
Do	194.56
	3,014.88

And the following items, the value of which is disputed, but are fixed by the umpire, as follows:

	Bolivars.
125 head of cattle, at 63 bolivars	7,875.00
9 donkeys, at 40 bolivars	360.00
24 head small cattle, at 40 bolivars	960.00
10 horses, at 240 bolivars, 2,400 bolivars; less 3 horses returned, 720 bolivars	1,680.00
8 head of cattle, at 63 bolivars	504.00
1 cow and 1 bull	130.00
1 cow	60.00
1 head of cattle	48.00
	11,617.00

Total, 14,631.88 bolivars, with interest at the rate of 3 per cent per annum from July 15, 1903, up to and including December 31, 1903.

RICHTER CASE.

Discussion of facts.

DUFFIELD, *Umpire:*

The Commissioners disagree only as to the amount which should be awarded to the claimant. The claim is for injury to and taking of property of the claimant at his hacienda, Tucua, in the district of Mariño, in the State of Aragua. His original claim was for 19,262 pesos (77,048 bolivars), which sum, less 400 bolivars, viz, 76,648 bolivars, the Commissioner for Germany is of the opinion should be allowed at its full amount, with interest.

The Commissioner for Venezuela, however, is of the opinion that only 22,000 bolivars should be allowed. He bases this claim upon the following grounds: First, that the claimant claimed as lost things of which there is no proof, as, for instance, two trunks and a valise with clothes and jewels, which he values at 500 pesos; cash, 200 pesos; destruction of houses, which he values in different lots at more than 2,000 pesos. He is also of the opinion that the claimant largely exaggerates the value of the property, specifying growing crops of cane ready to cut as valued at 800 pesos per tablon, when it is not worth more than 200 pesos; also a 7-months' cane growth at 500 pesos per tablon, when it is not worth more than 150 pesos. He also thinks it a grave circumstance, indicating bad faith on the claimant's part, and an intention to make his claim as large as possible, that the claimant, after—

this Commission decided that he should make his proof anew and before the judge of the court of first instance of La Victoria, the agent of the Government of Venezuela being present, the claimant, without waiting for a note to reach that judge, named two experts to judge of his list of prices.

Taking these objections in their order, the umpire is of opinion that there is proof of the loss of two trunks and the valise with clothes and jewels, and cash, and the destruction of the houses which the claimant values at more than 2,000 pesos. The list of articles taken, which the claimant made the basis of his claim, was, by order of the judge, annexed to the moving papers. And the witness Torealba testifies of his own knowledge that among the losses of the claimant were animals kept for working and breeding purposes, beasts, furniture, personal effects, cash, houses and huts on the hacienda, and a great number of working implements.

As to the exaggeration of values, the umpire finds no specific evidence to confirm the general statement in the opinion of the Commissioner. The testimony of the experts is not contradicted by any other specific evidence, and the appraisal is approved of by the judge after a personal survey of the premises. They are accredited by their appointment by the judge, and the umpire has found nothing in the case to indicate any lack of good faith and honesty on their part.

The objection by the Commissioner for Venezuela that two of the witnesses testify from notoriety and not from personal knowledge is not supported by the proof as to all the matters testified to by them while it is warranted as to certain matters. If they were the only witnesses there would be force in the objection to the extent that their testimony is based upon notoriety or hearsay. But the witness Torealba does testify from personal knowledge and is not contradicted.

The objection as to the exaggerated values is based upon the unsworn statement of the agent of Venezuela. It is not supported by the oath of any witness or corroborated by a detailed statement of particulars upon which the umpire can form any judgment except as to the value of the growing cane and the oxen. As to these a letter from a reputable commission house, dealers in and familiar with the value of these articles, is put in evidence, in which the value of a tablon (10,000 square varas) of cane, in the neighborhood of La Victoria, ready to be cut, is appraised at 800 bolivars, and a tablon of cane 7 months' old is appraised at 600 bolivars, and a pair of oxen at 400 bolivars, as against the claimant's figures on a tablon of cane ready to cut of 800 pesos (3,200 bolivars) and a tablon of cane 7 months' old, 500 pesos (2,000 bolivars). The discrepancy is so large that it is not reconcilable by mere difference of judgment. But on the one hand is the testimony of witnesses who swear they knew the property, while on the other the testimony is based on general market values. Ordinarily the first-mentioned testimony should govern, and if the witnesses had testified more in detail, and especially if they had testified as to a personal knowledge of the crops before their destruction, the umpire would have felt bound to accept their appraisal. In the absence, however, of such particularization, and considering the entire disinterestedness of the commission house in its appraisal, the umpire is convinced that there must be an error in the claimant's figures, notwithstanding their corroboration by the witnesses. For example, he claims for one tablon of "young" cane growth, one-half of which he claims was destroyed, as much as the commission house values a tablon of 7-months growth. For three other tablons of "young" cane growth, destroyed in whole or in part, he claims 500 pesos per tablon. For a tablon of 2-months growth he claims 300 pesos. In the opinion of the umpire these valuations are exaggerated and should be reduced. The umpire is of

opinion that a fair value of a yoke of oxen would be 125 pesos. The umpire also allows the expenses of the additional testimony called for by the commissioners, 50 pesos, or 200 bolivars. The total cane destroyed is allowed at 6,500 pesos (26,300 bolivars).

While the testimony therefore is meager, and is especially so as to values, in the absence of any proofs to the contrary the umpire believes it his duty to accept it, save in the particulars above specified. The objection based upon the alleged lack of good faith and apparent intent of the claimant to recover an exaggerated and unjustifiable amount of damages by asking a different judge to select the experts would have had great weight with the umpire if the facts warranted it. But the umpire is unable to find any such proof in the "expediente" or in the proceedings of the Commission. First, it is inaccurate to say that the claimant had knowledge that this Commission decided that new proof must be made before the judge of the court of first instance of La Victoria. The record of the eighth session reads as follows in this respect:

> And that he [the claimant] prove also, by means of a formal amplification of the proofs presented, the amount of the damages which he says he has suffered, with the intervention, if possible, of the representative of the agent of the Government of Venezuela, for which purpose the Venezuelan Commissioner will take charge of the steps necessary to be taken and will present at the next session informal letters, which he will address for the purpose to the judicial authorities in whose jurisdiction the above-mentioned properties are situated.

It appears by the records of the next sessions that such letters were not presented. The Commissioner for Germany states that in a letter dated the 27th of June last, a copy of which is attached to his opinion, he stated to the claimant that—

> the Commissioner for Venezuela will address a letter to the judges having jurisdiction, so that you will not meet with difficulties in the examination of the witnesses or experts you may present.

That the claimant on receipt of this letter asked the Commissioner for Germany if he could go to Tucua to gather proof, and if the communication had yet been sent to the judge, to which the Commissioner replied that it had left, having been shown by the Commissioner for Venezuela the draft of his note to the judge. It is also stated that the claimant had twice demanded that the President of the State of Aragua should name an agent to represent the Government.

It seems to the umpire that this conduct of the claimant is entirely consistent with good faith on his part. The agent of the Government was present at the examination of the experts and made no objection to the irregularity of the appointment. He was the legal representative for Venezuela and acted for her in the premises, and therefore had authority to waive any such irregularity, and by his conduct in making no objection did so waive it. Moreover, it will be borne in mind that the only irregularity was the appointment of the experts, and that the taking of the testimony was before the judge agreed to by the parties.

It is quite clear to the umpire that the understanding evidenced by the record of the eighth session was not to dispense with or throw out the testimony of the witnesses taken in 1902, but to amplify the proof with respect to values, and give the Government of Venezuela an opportunity to be present when testimony as to values was taken. This seems to have been done.

The umpire is therefore of the opinion that the claimant is not entitled to recover, under the proofs, the amount found due him by the Commissioner for Germany. It would undoubtedly have been more satisfactory if the claimant had made a more full presentation of evidence, both as to the property taken and as to its value. On the other hand, the character of the occupation of the hacienda by the troops of the Government was, at least to the claimant, a notorious event, and this may have induced him to think that comparatively little testimony was needed. It is also a fact of which the umpire can take judicial cognizance that occupation by troops of a property of this nature is always very destructive and damaging, especially to growing crops.

The claimant is therefore allowed the sum of 49,288 bolivars, with interest from the 22d of June, 1903, up to and including the 31st of December, 1903, at 3 per cent per annum.

METZGER CASE.

Law of domicile rules as to class of claims for damages to decedent which will survive to his estate.

Under the law of Venezuela the heirs may recover for bodily injuries, but not for damages to personal feelings or reputation.

DUFFIELD, *Umpire:*

The claimant alleges that on the 28th of May, 1902, while lawfully going from his house to his office, in Carúpano, he was assaulted by an officer of the Venezuelan army because the claimant would not give up the mule he was riding. The officer attempted to take the mule by force, and upon the claimant resisting another officer struck him two severe blows on the shoulder with a saber, inflicting serious injury. His life was also threatened, and he was subjected to other indignities.

If the occurrence had not arisen out of the demand for the mule it might be held that this was a purely wanton assault by the officer, for which, as the Venezuelan Commissioner contends, the Government of Venezuela could not be liable under the circumstances in the case.

But it is so notoriously the practice of army officers to impress property of this kind for the use of the Government, that I think Venezuela must be held liable for the act of the officer, if proven. It is said by Hall (4th ed., p. 226) that a government's—

> administrative officials, and its naval and military commanders are engaged in carrying out the policy and the particular orders of the government, and they are under the immediate and disciplinary control of the executive. * * * Where, consequently, acts or omissions which are productive of injury, in reasonable measure, to a foreign State or its subjects, are committed by persons of the classes mentioned, their Government is bound to disavow them, and to inflict punishment and give reparation when necessary.

It is contended, however, by the Commissioner for Venezuela, in opposition to the opinion of the Commissioner for Germany, that Venezuela is liable, that the "expediente" does not prove the case. He objects to the form of the testimony of the witnesses, and "their omission to explain the facts." He also claims that "Buran did not see what took place, as is inferred from the letter of the claimant on his complaint," and also that the testimony of the witnesses and the statement of the claimant conflict. Certainly the certificate signed by

the two witnesses is irregular in form, and if the case stood only on it the umpire is of the opinion that it is insufficient. It has been held, however, in this Commission that under the protocol the declaration of the claimant is competent evidence.

The letter of the complainant, in the opinion of the umpire, is not susceptible of the inference that Buran did not see what took place. That letter simply named two witnesses. It is true that Buran was not one of them. He, however, took the place of one who was named and presumably for some reason did not testify. Neither do the testimony of the witnesses and the statement of the claimant disagree. The former is, as has been said, scarcely competent evidence, and is confined to the mere statement of the injuries. In this particular respect there is no discrepancy, the only difference being that the complainant amplifies, and properly so, the statement of facts.

Considering the case made by the proofs in its entirety, and especially the letter from General Velutini, in which he states that the "assailant of Mr. Metzger is still in prison expiating his crime," the umpire is of opinion that, notwithstanding the irregularities and insufficiencies pointed out by the Commissioner for Venezuela in the testimony, the fact of the injury itself is established.

The Commissioner for Venezuela, however, insists that the right of action does not survive and pass to the heirs of Metzger, who are, as shown by the proofs, his mother, sister, and brother, all of whom are German subjects. It is conceded that under the laws of Germany such right of action does not survive, but the German Commissioner is of the opinion that this is not a claim between an individual and Venezuela, but "an international demand which the German Empire makes." In the opinion of the umpire this position is not maintainable. A similar question arose before the American and British Claims Commission in the cases of McHugh, No. 357, Elizabeth Sherman, No. 359, and Elizabeth Brain, 447. (Moore's Digest of International Arbitration, vol. 4, p. 3278.) The United States demurred to the claim, insisting that the right of action did not survive, and that that was the law of both Great Britain and the United States. In the McHugh case the demurrer was sustained, apparently because he left only collateral relatives not dependent upon him for support. In the other two cases the demurrers were overruled, Mr. Commissioner Frazer dissenting. Upon the final hearing upon the merits, however, the claim of Mrs. Sherman was disallowed unanimously, and although an award was made in favor of Mrs. Brain it was only on account of property taken from her husband and included no damages for his imprisonment. (Moore, etc., p. 3280). All the Commissioners seem to have agreed with Mr. Commissioner Frazer in the opinion that under the treaty only claims "on the part of citizens or subjects of the respective countries are submitted to the Government." The protocol under which this Commission is acting is substantially similar, and the umpire agrees with the reasoning of Mr. Commissioner Frazer, and is of the opinion that the claim now before this Commission is not a claim of the German Nation but a claim of an individual.

The Venezuelan code gives the injured party a right to recover his damages in a civil action in all cases of torts. (Código Civ., Arts. 1116, 1118.)

ART. 1116. Every act of a man which causes injury to another makes him through whose fault the injury happened liable to make reparation for the same.

ART. 1118. He is also liable not only for the injury which he caused by his own act, but also for that caused by the act of persons for whom he is responsible, or by the things which he has in his care.

This is in addition to fine and punishment in a criminal prosecution.

The heirs of a decedent succeed to all his property rights at the moment of his death, and no actual taking of possession is necessary. (Id., Arts. 894 and 896.)

ART. 894. Succession is opened at the moment of death at the place of the last domicile of the deceased.

ART. 896. Possession of the property of the deceased passes by law to the heir without the necessity of taking physical possession.

A right of action for damages for personal injuries is property. A fortiori is the claim in this case which had been presented and proved before the death of Metzger.

It appears, therefore, that under the laws of Venezuela the right of action for personal injuries does survive and pass to the heirs of the deceased, in so far as damages for corporeal injuries is concerned. This, in the opinion of the umpire, presents a different case from the above cited. The question is ably and, in the opinion of the umpire, convincingly argued in the opinion of Mr. Commissioner Frazer. Following its reasoning, the umpire is of the opinion that the law of the domicile determines the rights. Metzger, therefore, being domiciled at the time of his death in Venezuela, his heirs will take according to Venezuelan law, and they may recover in this case such damages as are just for corporeal injuries, including the expense and loss of time which naturally followed the injury, but not for the damages to his feelings and reputation. Neither can anything be allowed in the way of punitive or exemplary damages against Venezuela, because it appears, as above stated, that the general commanding the army promptly took action against the offender and punished him by imprisonment.

The claimant states his damages at 20,000 bolivars, and the Commissioner for Germany is of the opinion that he should be allowed one-half that sum, or 10,000 bolivars. There is no evidence in the "expediente" to show how severe his wounds were, nor any evidence of medical or surgical treatment or of any expense on account of same, and the clear presumption from the proofs is that the injuries were not permanent and did not in any way conduce to his death. As has been said, the action of the Venezuelan Government in promptly arresting and punishing the offender relieves her from any liability for a malicious injury, and the damages which Metzger might have recovered, if still living, because of the insults and indignities and damages to his reputation and standing in the community, not passing to his heirs under either the German or the Venezuelan law, which excludes all damages save those based on corporeal injuries, the umpire is of the opinion that the amount allowed by the German Commissioner is not warranted. If the claimant had, as was his duty, particularized the nature, extent, and severity of his wounds, it would be much easier to make a satisfactory assessment, and if the amount allowed should not be full compensation, it is because of this lack of evidence.

Basing the amount to be awarded upon the grounds above stated, in the opinion of the umpire the sum of 3,000 bolivars is ample. It results that the claimant will be allowed 3,000 bolivars without interest.

BISCHOFF CASE.

Damages allowed for unreasonable detention of property, and injuries resulting thereto during that time, where original taking was lawful.

DUFFIELD, *Umpire:*

This claim is based on the taking of a carriage belonging to the claimant, at Caracas, in August, 1898, during an epidemic of smallpox. Information came to the police that the carriage had carried two persons afflicted with the disease, and the police conveyed it to the house of detention, where it remained for a considerable time. During this time it was exposed to the weather, and the claimant alleges it was substantially injured. Upon ascertaining that the information upon which they had acted was false, the police offered to return the carriage to the claimant, and the claimant refused to accept it unless they would pay for damage done to it. The claimant also asks 18,000 bolivars for injury to his business, counsel fees, 40 bolivars, and legal costs, 25 bolivars.

The Commissioner for Venezuela is of the opinion that there is no liability under this state of facts. The Commissioner for Germany, however, while admitting "that the taking was made in good faith, and because of the smallpox epidemic then existing was justified," is of the opinion that the claimant was not bound to accept the return of the carriage, and that Venezuela is liable for its value.

It seems to be well settled by the authorities that in the case of an original wrongful taking of personal property the owner is not bound to receive the property in an injured condition.

Where the owner of personal property has been tortiously deprived of it, he is not, it has been held, bound to accept its return or restoration, if proposed, but may stand upon his legal rights. (American and English Ency. of Law, 2d ed., Vol. VIII, p. 692, and cases cited.)

But this principle only applies in cases of wrongful taking. The case shows, and the Commissioner for Germany admits, that the carriage was taken in the proper exercise of discretion by the police authorities. Certainly during an epidemic of an infectious disease there can be no liability for the reasonable exercise of police power, even though a mistake is made. But it is held in a number of cases before arbitration commissions involving the taking and detention of property, where the original taking was lawful, that the defendant government is liable for damages for the detention of the property for an unreasonable length of time and injuries to the same during that period. (Moore, Vol. 4, pp. 3235 and 3265.)

In the case at bar the umpire is of opinion that these are the only damages recoverable. As the claimant presents no evidence of the amount of these injuries he can not recover on the case as made. His mistake in refusing to accept the carriage was a mistake of law and not of fact, and, in strict right, he perhaps can not demand an opportunity to show the amount of these injuries. The case, however, is a hard one, inasmuch as he has lost his carriage through the mistaken though law action of the police, and has undoubtedly suffered damage to his business, which, however, is not legally recoverable. Under the words of the protocol providing for the examination and decision of claims "according to principles of justice," and that "the decisions of the Commission shall be based upon absolute equity," in the opinion of the umpire it is a proper case in which to allow the claimant an opportunity to show his actual damage. If the Commissioners can

not agree upon this amount without further proof the claimant will be allowed five days in which to make the same.

It results, of course, that there can be no allowance made for extrajudicial or other legal costs. In any event, the former are not recoverable under the opinion of the umpire rendered in the case of Hugo Valentiner. As to the latter, the umpire is of opinion that there is no power in the Commission to allow the costs of proving the claim. In all civil actions costs are created by statute, and only such are allowed as the statute provides for. It is true in the claim of Richter the claimant was allowed the costs of the additional testimony, but that was because the Commission itself had directed him to take it.

An entry will be made in the record in accordance with the above opinion.

FLOTHOW CASE.

Meaning of protocol in the provision for extending time for submission of claims.

DUFFIELD, *Umpire:*

In this case the opinion of the Commissioner for Germany is that the case should be received by the Commission and acted upon notwithstanding the fact that the time fixed by the protocol has expired, as has also the extended term fixed by the Commissioners at the seventh session, June 22, 1903. The Commissioner for Venezuela disagrees with this conclusion and is of the opinion that the extension of time made at the seventh session of the Commission, on the 22d day of June, 1903, exhausted the power of the Commissioner to make further extension, and that, moreover, the period covered by that extension having expired, the Commission has no power to create a new term.

The extension of the term at the seventh session was made by the agreement of the Commission without consultation with the umpire.

There is a decided misunderstanding by the Commissioners as to their action on the 22d of June, 1903, and even as to the accuracy of the record of that date. Fortunately it is not necessary to decide this difference. It appears upon a careful examination of the protocols that the translation into English which the Commission have been using contains a material error in the first paragraph of Article III of the additional agreement of May 7, 1903, the language of the translation being:

> The claims shall be presented to the Commissioners by the Imperial German minister at Caracas before the 1st day of July, 1903. A reasonable extension of this term may eventually be granted by the Commissioners—

while the original English duplicate, signed by Mr. Bowen and Baron von Sternberg, reads:

> The claims shall be presented to the Commissioners by the imperial German minister at Caracas before the 1st day of July, 1903. A reasonable extension of this term may in proper cases be granted by the Commissioners.

If the former translation were correct, there would be much force in the argument of the Commissioner for Venezuela. The Commission, however, must accept the language of the protocol signed by the representatives of the two countries. Under its language no authority is given to the Commission to make a general extension of the term for the presentation of claims. This is the necessary and only inference from the words "in proper cases." The umpire is therefore of the opinion that the action of the Commissioners on June 22 does not

affect the power of the Commission to consider on its merits the application of the claimant for permission to present his claim.

In the German text of the original protocol, signed by Baron von Sternberg and Mr. Bowen, the word "Commission" is used instead of the word "Commissioners" in the clause providing for the extension in proper cases. Basing his argument upon the English translation, the Commissioner for Venezuela has suggested that this may be a case in which the umpire, in case of disagreement of the Commissioners, has no power to decide. Even if the German original did not differ from the English, the umpire is of opinion that the word "Commissioners" as used in this article should properly be interpreted to mean the Commission. In other parts of the protocol the words "Commissioners" and "Commission." seem to have been used synonymously, and it is obvious that if the umpire had no authority to decide what is a reasonable extension in case of disagreement of the Commissioners, it would be entirely in the power of the Venezuelan Commissioner to prevent any extension that did not seem to him reasonable. Such an intention on the part of the representatives of the two countries can not, in the opinion of the umpire, be fairly presumed. Moreover, in the original protocol of February 13, 1903, to which the agreement of May 7 was supplemental, it is provided in Article IV: "in each case where the two members come to an agreement on the claim, their decision shall be final. In cases of disagreement *the claims* shall be submitted to the decision of an umpire to be nominated by the President of the United States of America." The claimant asks leave to present his claim upon the following grounds: It is based upon alleged injuries to and wrongful seizures of property on his breeding ranch, some of which occurred as late as May, 1903. This property was in charge of an agent of the owner, the latter having left Venezuela in 1901 and removed to Madrid with his family, where he still lives. It appears that the agent took the proofs which are offered in support of the claim in the latter part of June. They seem to be in proper form, although perhaps the evidence of the agent's authority may be subject to technical objections. Possibly on this account or for prudential reasons the agent deemed it necessary to send it on to his principal for approval. For some reason which does not appear they were sent to Germany and did not reach the claimant until about July 31, 1903. This occasioned the delay.

Under these circumstances the umpire is of the opinion that the case falls within the provision in the additional agreement of May 7, and is a proper one in which to grant an extension of the term fixed by the representatives of the two Governments.

While there is force in the objection of the Commissioner for Venezuela that the claimant may be presumed to have had knowledge of the protocol of February, it appears that the two Governments did not consider their convention complete as to modes of procedure and other matters provided for by the additional agreement of May 7. The earliest date, therefore, at which it would seem to have been incumbent on claimant to set about preparing his claim and proofs would be May, 1903, and as it also appears in this case that the injuries and seizure of property continued into that month, the case does not show, in the opinion of the umpire, an unreasonable delay on the part of the claimant.

In accordance with these conclusions, the claim will be admitted for the consideration and such disposition as the proof may warrant.

BREWER, MOLLER & CO. CASE.[a]

Taxes apparently legally levied and paid without protest can not be recovered.

DUFFIELD, *Umpire:*

The claimants ask to be allowed the sum of 20,283.20 marks which they have paid on account of taxes assessed against them by the municipality of San Cristóbal. They introduce in evidence a resolution of the municipal council of the district, dated the 28th day of September, 1902. This resolution recites that in the exercise of their authority under article 32 of the law providing for taxation for municipal purposes they have assessed the warehouses of the first class the sum of 3,000 bolivars every three months, and directs the junta clasificadora—board of assessors—to make the proper assessment and classification. Under this municipal action the claimants paid the sum above mentioned. They now seek to recover it from the Republic of Venezuela.

The Commissioners disagree as to the liability of Venezuela.

The umpire is unable to see any ground whatever on which to sustain this claim. The uniform presumption of the regularity and validity of all acts of public officials applies to this case, and there is not the slightest evidence or attempt to prove that these taxes were illegally levied. There is a statement in the expediente that only warehouses owned by Germans fell under the operation of this law. If it were shown that this tax was specially levied upon Germans owning warehouses, because they were Germans, or that for any other reason they were unlawfully classified, the allegation might need further consideration; but it so clearly appears that the tax is a general one, and that the classification is made upon a basis of the values of property, that it excludes any such inference. Moreover, the claimants do not appear to have raised any objection to the classification, but paid the taxes voluntarily. It is a settled law that the voluntary payment of taxes purporting to be levied under a valid law waives all irregularities in the assessment. It is very doubtful if the Republic of Venezuela could under any circumstances be made liable to the amount of irregular or illegal taxes collected by one of the municipal districts. But it is not necessary to decide this, as upon the whole case as made there is an absolute want of equity in the claim, even as against the municipal district of San Cristóbal.

It results that the claim must be wholly disallowed.

CHRISTERN & CO. CASE.

Beckman case affirmed (see p. 598).

In the absence of specified rate of interest only legal rate recoverable. Compound interest refused.

DUFFIELD, *Umpire:*

The claimant asks the sum of 21,256.12 bolivars. This sum is made up of 2,800 bolivars for cattle taken by the Government, 7,996.71 bolivars for war duties, so called, being an increase of 30 per cent of

[a] The cases of Adolph Noack and Steinworth & Co. were also disallowed for the reasons given in the following opinion.

the previous customs duties imposed by a decree of the National Government dated the 16th of February, 1903, and 10,459.41 bolivars for a debt of the State of Zulia.

The Commissioners disagree as the liability of Venezuela for the first and third items, but agree to the disallowance of the second item.

The umpire is of the opinion that the proofs do not make out a case of vested right in the claimants under the customs law which they count upon, and that the decision of the Commissioners in respect of this item is correct.

The Commissioner does not dispute the fact or the value of the cattle taken by the Government of Venezuela, but he claims that Venezuela is discharged from liability because of a novation between the claimants and the State of Zulia. Granting this premise, the umpire is of the opinion that the Government of Venezuela is still liable for the claim. His reasons for this conclusion are stated in full in the case of Beckman.[a]

The decision in that case also decides the liability of Venezuela for the loan to the State of Zulia. The Commissioner for Germany, however, allows the claimants the full amount of this item of their claim, 10,459.41 bolivars, with the usual interest. This amount includes interest at 1 per cent a month, compounded with yearly rests, and increases the original amount of the item thereby 4,589.37 bolivars. The umpire is unable to concur in this finding. He does not find any warrant or authority in the proofs for compounding interest. Neither do the proofs show that under the agreement made on the 14th of February, 1900, between the representatives of the government of Zulia and the parties who made the war loan for the purpose of adjusting the amount due, of which the claimants' share was 11,625.04 bolivars, there was any agreement for any rate of interest on the amount then agreed upon. There is also an entire absence of proof as to the rate of interest which the original loan was to bear. It is too clear to need argument that if no rate of interest is agreed upon by the parties, only the legal rate can be allowed. This rate in Venezuela is 3 per cent per annum. Instead, therefore, of allowing the sum named by the Commissioner for Germany, the item is allowed at the sum of 6,083.22 bolivars, being the original amount of loan, 11,254.04 bolivars, with interest at 3 per cent from February 14, 1900, to December 31, 1903, less the payments made thereon and interest on those payments.

For the same reasons the umpire concurs in the decision of the Commissioner for Germany as to the first item, and awards therefor the sum of 2,800 bolivars, with interest from the date of the presentation of the claim, August 3, 1903, up to and including December 31, 1903. Total amount awarded claimants, 8,917.74 bolivars.

---

[a] See p. 598.

Orinoco Asphalt Case.

A government has no right to close ports of the country which are in the hands of insurgents unless it can maintain the blockade by force.[a]

Duffield, *Umpire:*

The Commissioners have agreed upon the allowance of the first six items of the claim, at 4,414.82 bolivars. They disagree upon items 7 and 8. These are based upon the alleged refusal of the Venezuelan consul at Trinidad, for the period between April and October, 1902—twenty-two weeks—to give clearance papers to the boats of the company, *Ibis* and *Explorador*, from Port of Spain, Trinidad, where the principal office of the company is, to the Island of Pedernales, where its mines are, in consequence of which the said boats were forced to lie in Port of Spain for the period in question, and communication between the mines and the outside world was cut off. In addition to its rights under international law, the company asserts the concession to it from the Government of Venezuela to maintain communication between its mines and Trinidad by means of its boats used for that purpose, and in support of it sets up an Executive decree of February 7, 1901; it also claims a right under the laws of Venezuela—la ley XVI de Hacienda, Articulo 39. The damages arising from this act of the Government are presented in detail.

The Commissioner for Venezuela maintains that his Government is not liable, because in April, 1902, revolutionary forces occupied the country about Pedernales, where the mine of Pedernales is, and Guiria, where the custom-house of Venezuela for that territory is situated, and the Venezuelan consul refused to clear the boats on that account. He insists that the action of the consul was justified because the—

> boats which were cleared from Guiria would serve the revolution which took them; and besides, if the revolution collected duties it would bring them in money resources, and that the Government of Venezuela had declared the blockade of these regions, and the consul in Trinidad obeyed the Government's decrees. That because of the war, guarantees were suspended, and in such a period free transit or free traffic especially suffers when it is a traffic of boats which may serve or do serve the revolutionists, and that in no event would Venezuela consuls clear boats for places occupied by the rebels.

The first contention of the Commissioner for Germany, based upon an alleged concession to the company, is not supported by the facts. Article 1 of the Executive decree of the 7th of February, 1901, is as follows:

> Article 1. The port of Pedernales, on the island of the same name in the delta of the Orinoco, is established only for the exportation of asphalt and petroleum which is taken from the mines belonging to the Orinoco Asphalt Company.

In the opinion of the umpire, this is in no legal sense a legal concession; no consideration appears to have been given for it. It is a mere privilege or favor shown to the company, by which, instead of clearing for or from Guiria, they may clear from Port of Spain to the island where their works are, and *vice versa*. So far as this decree goes, the umpire is clearly of the opinion that it might be at any time revoked by the Government of Venezuela.

The argument that any special rights were conferred upon the com-

[a] See Topaze case, p. 331; De Caro case, p. 810; Martini case, p. 819.

pany or any other importers by article 39 of the sixteenth law of hacienda is not, in the opinion of the umpire, maintainable. The law merely provides and prescribes the official duties of consuls, for the ordinary breach of which it would seem clear that Venezuela would not be liable, and that the party injured thereby must look to the consul and his bond for indemnification.

The case, therefore, must be decided upon general principles of international law, whether Venezuela, even though her ports were in the possession of revolutionists, might lawfully close them to traffic with neutrals. That she did so in this case, and that the consul acted under her instructions, is not disputed.

It is said in Wharton's Digest of International Law, section 361, that the received tenets of international law do not admit that a decree of a sovereign government closing certain national ports in the possession of foreign enemies or of insurgents has any international effect, unless sustained by a blockading force sufficient to practically close such port.

Mr. Lawrence, in a note on Wheaton, Bk. IV, chapter 4, paragraph 5, states the rule and the reasons for it as follows:

> Nor does the law of blockade differ in civil war from what it is in foreign war. Trade between foreigners and a port in possession of one of the parties to the contest can not be prevented by a municipal interdict of the other. For this on principle the most obvious reason exists. The waters adjacent to the coast of a country are deemed within its jurisdictional limit only because they can be commanded from the shore. It thence follows that whenever the dominion over the land is lost by its passing under the control of another power, whether in foreign war or civil war, the sovereignty over the waters capable of being controlled from the land likewise ceases.

In 1861 New Granada being in a state of civil war, its Government announced that certain ports would be closed, not by blockade, but by order, and it was held that the method was one which could not be adopted against a foreign enemy holding the ports in question, and consequently could not be adopted against a domestic enemy. Lord John Russell said on this subject that—

> "it was perfectly competent for the government of a country in a state of tranquillity to say which ports should be open to trade and which should be closed; but in the event of insurrection or civil war in that country, it was not competent for its government to close ports which were de facto in the hands of the insurrectionists, and that such a proceeding would be an invasion of the international law relating to blockades." Subsequently the Government of the United States proposed to adopt the same measure against the ports of the Southern States, upon which Lord John Russell wrote to Lord Lyons that "Her Majesty's Government entirely concur with the French Government in the opinion that a decree closing the southern ports would be entirely illegal, and would be an evasion of that recognized maxim of the law of nations that the ports of a belligerent can only be closed by an effective blockade." In neither case was the order carried out. In 1885 the President of Colombia, during the existence of civil war, declared [certain ports] to be closed without instituting a blockade. Mr. Bayard, Secretary of State for the United States, in a despatch of April 24th of that year fully adopted the principle of the illegitimateness of such closure, and refused to acknowledge that which had been declared by Colombia. (Hall, p. 37, note.)

In the case of the *Only Son* the umpire of the United States and British Commission of 1863 allowed the claim of the owners of the schooner of that name for the wrongful act of the collector of customs at Halifax, Nova Scotia, compelling the master of the schooner to enter his vessel and pay duty on his cargo, instead of reporting for a market and proceeding elsewhere if he thought it advisable. In the preceding diplomatic correspondence the British Government had

acknowledged its liability, but claimed that no loss was suffered. (Moore on Arbitration, pp. 3404–3405.)

In the case of the *William Lee*, a whaling ship detained for three months by the refusal of the port to give a clearance, the claimant was allowed $22,000. (Moore, pp. 3405–3406.)

In the case of the *Labuan*, United States and British Claims Commission, 1871, the claimant was allowed by the unanimous judgment of the Commission $37,392 because the custom-house officials at New York refused his vessel a clearance from November 5 to December 13, 1862. The action of the custom-house in New York was in pursuance of instructions from the United States Government, which claimed the right to detain the ship, in common with other vessels of great speed destined for ports in the Gulf of Mexico, in order to prevent the transmission of information relative to the departure or proposed departure of a military expedition fitted out by the authorities of the United States. The contention of the claimant's counsel was that the refusal to clear the vessel was in effect taking private property for public use, and, while it may have been justified by the necessity of the case, it involved the obligation of compensation, citing 3 Phillimore, 42, and Dana's Wheaton, 152, note. (Moore, pp. 3791–3793.)

The umpire is therefore of the opinion that the Government of Venezuela was not justified in directing its consul at the Port of Spain to refuse clearances to the ships of the claimant company. It appears from the case, however, that the Venezuelan consul at the Port of Spain offered to clear—

> the boats belonging to that company, which she intends shall carry provisions to the laborers in the mines. * * * But under the written conditions sent by the Government * * * that that company must pay into this consulate, upon the delivery of the clearance of this boat, the amount of all the duties which it would have to pay at the custom-house at Guiria.

This conditional permission was not accepted, and the claimant was justified in refusing it.

It results that the claimant company is entitled to recover such damages as they have established by their proof, which are:

Item 7a, 640 bolivars for the loss of freight for the lighter *Ibis*, 40 tons capacity, one trip in the month of April.

Item 8a, for loss of freight of lighter *Ibis*, twenty-two weeks, 22 voyages, at 1,248 bolivars the round trip, 27,456 bolivars. It is held by the courts of England and the United States that damages in cases of demurrage, which is entirely analogous to the claimant's claim, if it is not in fact demurrage, are measured by the value of the use of the vessel. (Re Trent *v.* Humber Company, Eng. Law Reports, 4th Chancery, 112; The *Pietro G.*, 39th Federal Reporter, U. S., 366.) The United States Supreme Court have held, in The Potomac *v.* Conor (105 U. S., 630), that the average of net profits on the trip for the season may be adopted as the measure of damages for the loss of the use of the vessel resulting from collision. This latter case, however, was the case of a merchant vessel doing a general carrying business. The *Ibis*, it appears, was the company's own property and engaged in transporting the company's freight. It is quite certain that it would have had full freight from Pedernales to Trinidad on every voyage, and, taking into consideration the carrying on the return trip of supplies for the mines and food for the men, as well as machinery, it is fair and reasonable to believe that she would have had full freight on her return trip.

The umpire therefore agrees with the Commissioner for Germany in the allowance of items 7 and 8a, viz, 624 bolivars and 27,456 bolivars.

Item 8b, for injuries occasioned to the *Ibis* by her long stay in salt water, 728 bolivars, is certainly a proper charge. It is held by the Supreme Court of the United States, if a vessel is capable of being repaired and restored to her original condition, the cost of such necessary repairs is a correct rule of damage. (The *Granite State*, 3 Wall., 310; The *Baltimore*, 8 Wall., 377.)

Item 8c, 4,520.66 bolivars for the wages of the captain and crew of the *Explorador* during the time she was detained in Port of Spain, seems reasonable in amount, and no reason is presented in the opinion of the Commissioner for Venezuela why it should not be allowed. The umpire agrees in the allowance by the Commissioner for Germany of this item.

The same is true of item 8d, which is like 8b except that it is for the *Explorador* instead of the *Ibis*. For the reasons stated in the other item, the amount is allowed, 829.74 bolivars.

Item 8h, 161,200 bolivars, is made up by the claimant as follows: By reason of the action of Venezuela, through her consul in Trinidad, the *Explorador* and the *Ibis* were practically put out of commission from the latter part of April to some time in October, 1902—twenty-two weeks. As the claimant was unable to use the boats, and presumably for the same reason which prevented their use could not have obtained the services of any other vessels, even if they could have cleared for Pedernales, which under the decree establishing that port is doubtful, all operations at the mines were stopped because the character of the asphalt was such that any long exposure depreciated its quality and value. The claimant therefore charges for one hundred and twelve working days during this period, and claims that the normal production of the mines was 30 tons a day, and they could have produced during those days 3,360 tons, which was worth $25 United States gold (130 bolivars) a ton, which was the average price for the whole of that year, aggregating 436,800 bolivars, less the expense of production, transportation, and exportation, 275,600 bolivars, leaving a balance of 161,200 bolivars. It will be seen, however, that this makes no deduction for the value of 3,360 tons of asphalt at the mine; but this asphalt was never removed, and is still presumably as good in its natural state as it was during the period in question. There is no claim that the market value of the asphalt has fallen, and for three months of the year 1902 the claimant's basis of $25 United States gold (130 bolivars) per ton would govern. There is no evidence of the value of the asphalt at the mines in its natural state, although in its trial balance of December, 1901, the company puts in the item of real estate, including the asphalt mine at 405,326 marks. It seems very clear that the principal sum of 161,200 bolivars can not be recovered.

In the absence of any testimony on which any definite appraisal of the value of the asphalt at the mines can be based, the claimant has not shown the actual amount of his damage. In the opinion of the umpire a fair, and perhaps the only, measure of damage is interest on the amount for which the product of the mines would have sold during the period of stoppage of traffic. Perhaps mathematical accuracy might require this interest to be calculated for the average time, but under all the circumstances of the case the umpire is of opinion that it is just to allow interest for the entire period. The award made by the Com-

missioner for Germany on this item will therefore be reduced to interest for one hundred and fifty-four days at 5 per cent on 161,200 bolivars, namely, 3,447.84 bolivars.

On these figures the aggregate sum of 42,027.78 bolivars is awarded to the claimant, which includes the 4,466 bolivars agreed to by the commissioners for items 1–6, inclusive, with interest at 3 per cent per annum on 37,606.46 bolivars from the date of the presentation of the claim, August 10, 1903, to and including December 31, 1903.

WENZEL CASE.

Amnesty granted by the Chief Executive of Venezuela, being in excess of his powers, does not make the State liable for damages inflicted by the persons pardoned.

DUFFIELD, *Umpire:*

This claim is for 19,801.31 marks. The commissioners agree that certain items of the claim should be disallowed, but disagree as to item 4, for injuries to property inflicted by the revolutionist forces under General Hernandez in November, 1899, and March 1900, for which damages are claimed in the sum of 15,035 bolivars.

The Commissioner for Germany is of the opinion that this item should be allowed at its full amount, with interest, while the Commissioner for Venezuela is of the opinion that it should be entirely disallowed. The Commissioner for Venezuela is of the opinion that because the acts complained of were those of revolutionists Venezuela is not liable and because the claim is covered by the decision of the umpire in the case of Van Dissel & Co. In the claim of Van Dissel & Co. the acts of revolutionists under General Garbiras were under question, and the opinion specially confined the effect of the decision to that revolution, saying: "It is not intended by this opinion to decide that Venezuela may not be liable for acts of revolutionists in an insurrection prior to the Matos movement." Following this decision, the claim of John Roehl, No. 31, was disallowed. In that case the injuries complained of were by Hernandez revolutionists. The case, however, was presented to the umpire for a formal decision, the commissioners agreeing upon the amount and that it was controlled by the Van Dissel case.

In the present case the Commissioner for Germany insists that Venezuela is liable for the acts in question, first, because the admission in Article III of the protocol should receive a broader construction than given to it by the umpire in the Van Dissel case,[a] and, second, because a general amnesty was granted to the Hernandez revolutionists and General Hernandez himself is now representing the Government of Venezuela as its minister to the United States.

The umpire is unable to agree with the Commissioner for Germany in his construction of Article III, but adheres to his former opinion. The second point, however, is for the first time raised in this Commission. The precedents of former arbitral commissions seem to be in favor of the contention of the Commissioner for Germany. In the *Montijo* case the Hon. Robert Bunch, British minister to Bogotá, was the umpire. It was argued by the arbitrator for Colombia on this

---

[a] See p. 568.

point that as a general amnesty in favor of Messrs. Herrera, Diaz, and all other persons concerned in the attempted revolution of April and May, 1871, was subsequently granted by the President of the State of Panama in the exercise of his constitutional powers, no judicial proceedings could be instituted against them as revolutionists, and consequently for injuries done by them nothing could be recovered from them by either foreigner or native.

To this argument the umpire noted two objections:

> The first is that, even in the absence of any express stipulation to that effect, the grantor of an amnesty assumes as his own the liabilities previously incurred by the objects of his pardon toward persons or things over which the grantor has no control. In the present case it will scarcely be contended that the captors of the *Montijo* had any right beyond that emanating from a revolutionary movement to take the vessel from the dominion of her owners. * * *

If no amnesty had ever been granted, and had Herrera, Díaz, and their associates been honestly and effectively proceeded against in the courts of the Republic and cast in damages toward the owner, the aspect of the case would have entirely changed. It would have been at least an open question whether their possible or even notorious inability to pay those damages would have rendered Colombia at large responsible for their act. But the amnesty deprived the Messrs. Schuber of the power of trying the question. Therefore the President of Panama, having no right to dispose of interests which were not his property, and which, on the contrary, he was bound by a public treaty to protect, assumed the responsibility to the owners of those interests of the persons by whom they had been injured. It is an old saying that one must be just before one is generous. In Spanish the version is "*La bolsa ajena es muy franca.*"

The distinguished rank of the umpire as a diplomat and the legal ability which is shown in all his opinions, as well as the reasons given for his conclusions, make his opinion worthy of the most serious consideration. (Moore on Arbitration, 1421, 1427, 1438. See also decision of the Mixed Commission in the *Col. Lloyd Aspinwall* case; Moore, 1015–1016.)

But it must be borne in mind that it appeared in that case that a treaty of peace was made by the president of the State of Panama with Herrera, chief of the revolutionists, by Article VII of which a complete amnesty was reciprocally granted and "the Government assumes as its own the expense of the steamers and other vehicles which the revolution has had to make use of up to that date." (Moore, p. 1428.) The decision might well have put in this provision, and that portion of the opinion as to the effect of amnesty generally may be treated as obiter dictum.

Venezuela was held liable in damages by the United States and the Venezuelan Commission, under the convention of December 5, 1885, for not punishing the insurgents who attacked General García's forces on board the American steamer *Apure* in 1865. The Commission held that there was not a state of war in Venezuela, although there was an armed conflict between the president of the State of Apure and his enemies under Generals Sosa and Mendez. (Opinions, pp. 481–482; Moore's Arbitrations, p. 2967.)

Mr. Commissioner Little said:

> The criminals were the conspirators upon the shore. Venezuela's responsibility and liability in the matter are to be determined and measured by her conduct in ascertaining and bringing to justice the guilty parties. If she did all that could be

reasonably required in that behalf, she is to be held blameless; otherwise, not. Without entering upon a discussion of the investigation instituted and conducted by her, * * * it was notorious who they were. It does not seem that any attempt was made before any local authority to bring them or any of the band to justice. Had there been a well-directed effort of that kind, or had the Government's investigation disclosed their innocence and failed to discover those actually guilty, its responsibility would perhaps have ended, assuming the investigation, as I do, was a fair and just one. But neither of these things appears to have occurred. * * * On the whole, however, considering the heinous character of the offense, it may fairly be said that Venezuela here fell short of her entire duty.[a]

Mr. Commissioner Findlay said:

A State, however, is liable for wrongs inflicted upon the citizens of another State in any case where the offender is permitted to go at large without being called to account or punished for his offense or some honest endeavor made for his arrest and punishment. (Opinions, p. 486; Moore's Arbitrations, p. 2969.)

It must be borne in mind that this case was a seizure of an American steamer, which may be distinguished from injuries or seizures of property by movements of opposing troops in active operations. (See brief of counsel for claimant in the Venezuelan Transportation Company case.)

In the United States and Venezuelan Claims Commission in 1895, in the case of the Venezuelan Steam Transportation Company, the Commissioners awarded the claimant damages for injuries to the steamers belonging to the claimant inflicted by insurgent authorities.[b] (See Report of Commission.)

In an exceedingly able opinion, Mr. Commissioner Andrade dissents from the award of the Commission. But in the course of his reasoning he does not deny the above rule, but impliedly, if not expressly, admits it. He says:

As a general rule the private acts of citizens do not compromise the liability of the State, save when it can prevent these and fails to do so, or when, after their consummation, it approves or ratifies them in some way. (Moore, p. 1730.)

In the case before him, however, he claimed that if for reasons of state Venezuela thought proper, in 1873, to seal the national peace with forgiveness for all political offenses, no other sovereignty has the right to call her to account for that sovereign act.

In the opinion of the umpire, while this statement is true, it does not follow, and the learned Commissioner seems to have refrained from saying, that the consequences of such forgiveness of political offenses which have injured neutrals may not be a liability on the part of the State. In that case, however, the revolutionists who committed the injuries succeeded and their leader, General Blanco, established a constitutional government.

There are no reasons stated by the majority of the Commissioners for the award, but from the brief of counsel for the claimants it appears that it may have passed on other grounds, viz, the culpable failure of the Venezuelan Government to take adequate measures to prevent the seizure of the company's steamers, although they knew that they were in danger, and that they were carrying Venezuelan mails under the United States flag; that the Government allowed the town of Bolívar to remain for nearly six months in the hands of the "Blues," and permitted them to move quietly away when the Government forces approached; that a fort near the mouth of the Orinoco was held against

[a] See discussion of this point in Poggioli case, p. 847.
[b] Upon this point see comments of Umpire Plumley, p. 374.

the Venezuelan Government as late as January, 1872, by a "Blue" officer and his wife with two old-fashioned smoothbore guns, equally dangerous at both ends; and that the right granted the company by the Venezuelan Congress to fly the flag of the United States on their vessels was a pledge by the people of Venezuela that they would not violate any of the rights and privileges of the vessels or their officers under its protection. And special stress was laid by counsel upon the distinction between injuries to persons or property in the theater of active hostilities, "for which," they say, "governments are not responsible, and deliberate seizures of neutral vessels under the flag of their country."

The case of Divine (Moore, p. 2980) is contra. The claim was for setting fire to a house and all its contents in Matamoras, Mexico, in 1851.

> The city [says Moore] had been in the possession of General Avalos, military commander of the State of Tamaulipas, and General Carvajal had placed himself at the head of a movement to displace his authority. Carvajal besieged the city, and at length assaulted it. In the course of the assault the house in question was destroyed, though the American consul, at the risk of his life, placed himself between the combatants, and, displaying the American flag, besought them to spare the property.

Mr. Ashton, agent of the United States, in his brief to support the claim, established that General Carvajal, having been conquered in Tamaulipas, was pardoned by means of a general amnesty and restored to his civil rights; was afterwards a brigadier-general and civil and military governor of Tamaulipas and other States, and was afterwards, in 1864, sent to the United States as commissioner with extraordinary powers, and was named and continued to be a major-general in the Mexican army. Under these circumstances Mr. Ashton sustained the liability of the Mexican Government.

The umpire, Sir Edward Thornton, said:

> It is alleged by the claimants themselves that the destruction of the property on account of which the claim is made was due to the acts of rebels, and for this reason alone the umpire is of opinion that the Mexican Government can not be called upon to make compensation for the damage done. * * * It is urged [he adds] that the Mexican Government granted an amnesty to Carvajal, and therefore made itself responsible for his acts. Other governments, including that of the United States, have pardoned rebels, but they have not on this account engaged to reimburse to private individuals the losses caused by those rebels.

But it is further contended by the Commissioner for Venezuela that there was no amnesty granted to the Hernandez revolutionists, and the imprisonment of General Hernandez, the leader, lends this position some support.

In connection with the release of General Hernandez, General Castro, on the 9th of December, 1902, issued a proclamation in which, after denouncing the action of the allied powers in seizing the war ships and ports of Venezuela, and calling on all Venezuelans to lay aside all differences and rally to the defense of their country, said:

> And seeing that this [the country] can not be great and powerful except in the pure air of brotherhood of all its sons—and circumstances demand the union of them all—in the name of my sentiments and her necessities above expressed, I open the doors of all the prisons of the Republic to the political prisoners who are still confined therein. I likewise open the doors of the country to Venezuelans who for the same reasons are in foreign lands, and I restore to the enjoyment of the contitutional guaranties property of all revolutionists which was embargoed for reasons of public order.

It is contended by the Commissioner for Venezuela, first, that this language can not be interpreted as an amnesty; and, second, that under

the constitution of Venezuela the President has no power to grant amnesty. In the opinion of the umpire a general pardon of past offenses by a government is an amnesty, which is commonly defined to be an act of oblivion. Its effect is that the crimes and offenses named in the act are obliterated, and they can never again be charged against the guilty parties. Where no offenses are named in the act the amnesty is general. The preamble of this proclamation would seem to necessitate an interpretation of the paragraph above quoted, which absolves from all punishment in the courts or by the authorities of Venezuela all political prisoners in Venezuela and all political offenders in other countries for any act committed by them while in rebellion.

Under a system of Government in which the Executive has the pardoning power it might be difficult to sustain the contention of the Commissioner for Venezuela. But it is not necessary to decide this question. The constitution of Venezuela is peculiar in this respect, and in the opinion of the umpire it sustains the position of the Commissioner for Venezuela. It confers no power upon the Executive to grant amnesties, but in express terms gives the legislative branch of the Government that power. Article 54, section 21, of the constitution of Venezuela of 1901 provides:

> The Congress of the United States of Venezuela shall have the following powers: * * * to grant amnesties.

General Hernandez on the 2d of March, 1898, organized an insurrectionary movement which extended to all the States of the Republic. It ended with the capture of General Hernandez at La Vega on the 12th of June. It comprised eighty-four armed encounters, in one of which General Crespo was killed—the battle of Carmelora, in the year 1898. General Hernandez was captured and imprisoned at San Carlos fortress. The revolution of the restoration under General Castro began on May 23, 1899, on which day, after his first battle at Tonono, he issued a manifesto, taking for the standard of his armed movement the restoration of the constitution he alleged had been violated by the high powers of the nation. General Hernandez was still in prison in San Carlos fortress, but many of his followers joined in the Castro insurrection. On the day after General Castro made his triumphal entry into Caracas, he set at liberty the political prisoners whom the government of Andrade had imprisoned, and among them General Hernandez, leader of the first nationalist revolution, and appointed the latter his minister of public works. A few days thereafter Hernandez left Caracas by stealth, accompanied by the forces of Gen. Samuel Acosta, his companion in arms in the first nationalist revolution, and proclaimed a revolution against the government of General Castro. It was in this last revolution that the injuries complained of occurred. He was again defeated, and on May 27, 1900, imprisoned in the fortress of San Carlos for some time. He remained there until the 11th of December, 1902, when he was set at liberty under the proclamation above referred to and came to Caracas, to parley with General Castro. He has since then supported the Government and has been sent to represent it as minister to the United States.

The claim therefore falls within the decisions in the cases of Van Dissel & Co., No. 11, and John Roehl, No. 31, and is disallowed.

BREWER, MOLLER & CO. CASE (second case).

Beckman case (p. 598) affirmed.
Faber case (p. 600) affirmed.
Meaning of "local legislation" and "technical objections," as set forth in protocol.

DUFFIELD, *Umpire:*

The claim in this case is for 843,705.36 bolivars, made up of the following items:

1. War duties.
2. Acts of piracy.
3. There is no proof of item 3 and no reference to it in the expediente.
4. The debt of the State of Zulia.

5 and 6. Injuries to and seizures of property by Government troops and revolutionists.

Part of 7 and all of 8. Damages caused by the closing of ports on the Catatumbo and Zulia rivers.

Part of 7. Stoppage of mails in connection with the closing of the ports on the Catatumbo River.

9. Share of claimant in the claim of the Lake Maracaibo and Catatumbo River Navigation Company.

Of these items 1 and 2 were disallowed by agreement of the Commissioners; 5 and 6 allowed by agreement of the Commissioners at 33,958 bolivars.

Item 4, for the debt of the State of Zulia, is allowed by the umpire under the decision in the case of Beckman & Co., No. 47, in the sum of 53,296.67 bolivars.[a]

Part of 7 and all of 8 are disallowed by the umpire under the ruling in the case of George Faber, No. 53.[b]

The remaining portion of item 7, for damages alleged to have been suffered by the interruption of the postal service in connection with the closing of the ports on the Catatumbo River, 75,000 marks, is, in the opinion of the Commissioner for Germany, a valid claim against Venezuela and should be allowed. He is of the opinion that the stoppage of the mails is in violation of the International Postal Union treaty of Washington.

It appears from the statement of the claim that following the closure of the ports on the rivers Zulia and Catatumbo this stoppage of mails occurred. It is evident that the established postal route between Maracaibo and Cucuta was necessarily abrogated by this action of the Government of Venezuela, and it is difficult to see how a claim can be sustained before this Commission on this ground. However, it clearly appears from the "expediente" that there is no proof of any special elements or items of damage to the claimants upon which any calculation or legal estimate of the amount of damage they suffered in consequence can be made. In the absence of any such proof, therefore, the sum claimed can not be allowed.

Item 9, 98,240 bolivars is for the claimant's share, 25 per cent of the credit which the Lake Maracaibo and Catatumbo River Navigation Company have against the Government of Venezuela. It is agreed by the Commissioners that this credit amounts to 162,218.03 bolivars. But it is claimed by the Commissioner for Venezuela that claimants have

[a] See p. 598. [b] See p. 600.

no legal interest therein. In support of this contention he cites the Venezuelan Code of Commerce, page 388, articles 242–247. The first five articles describe "Associations of accounts in participation" (Asociaciones de cuentas en participación), and the rights and lia bilities of persons interested therein. Article 247 exempts these associations from the formal requisites required from companies by articles 162, 163, and 168.

By article 242 the party giving participation in the profits or losses of his business on one or more operations thereof is the managing agent, and by article 244 the persons participating in the profits or losses have no right of property in the effects and property of the association, not even in that which they themselves have contributed. Their only right is to have an account of what they have contributed in the losses or profits of the operation. By article 245, in case of failure, they are placed in the column of creditors in case their contribution of capital exceeds its proportion of losses.

It is agreed by the Commissioners that there is no regularly formed association or partnership known as "Lake Maracaibo and River Catatumbo Navigation Company," but that the concern popularly so known is in reality Piñedo, García & Co., Brewer, Moller & Co., Luciano Añez & Co., and Van Dissel & Co. On the 1st of October, 1900, they formed this association by the articles of agreement marked "Exhibit 6" in the "expediente." Under them Piñedo, García & Co. are made administrators and have entire charge of the management of the business and the control and conduct of its properties, and in all respects appear to be the "merchant"—"comerciante"—described in article 246 of the code of commerce above referred to. Under these circumstances the umpire is clearly of the opinion that none of the other parties to the agreement of October 1 have, in the language of article 244, "any right of property in the effects of the association, not even in those in which they themselves have contributed."

But it is claimed by the Commissioner for Germany that under the precedents of decisions by former international tribunals coowners of property such as the "owners of commercial funds may enforce their several interests in a claim in a diplomatic proceeding," and that the objection of the Venezuelan Commissioner that "the company can only figure as an entity," and that it is inadmissible to award their parts to each of the partners, is a technical objection, lacking support in international law; and, further, that the provisions of Venezuela are not binding on this Commission under the protocol which requires that it disregard provisions of local legislation.

Taking up these objections in their inverse order—

First. The umpire is of the opinion that the articles of the code in question are not local legislation within the meaning of the protocol. The parties to the protocol primarily intended by these words, it is quite evident, that Venezuela should be estopped from insisting upon the general provision in her law requiring foreigners as well as citizens to present their claims against the Government to the courts of Venezuela. Incidentally, of course, like provisions of local legislation were intended to be excluded; but it can not be presumed that all the laws of Venezuela with reference to the formation of corporations or of partnerships, or of limited associations, or in respect to the rights and obligations of holders of real estate were so included. Neither can it be reasonably presumed that it was intended to estop

Venezuela from invoking the provision of local legislation to which foreigners, by associating themselves with Venezuelans, and by their voluntary and solemnly executed consent, had agreed. A fortiori must this be the case under circumstances like those under consideration, where, by the agreement between the foreigners and the Venezuelan citizens, the foreigners expressly stipulate that all right of property in the effects of the association shall be vested in the Venezuelan citizen.

Second. The umpire is unable to regard the objection of the Commissioner for Venezuela as a technical one, in the sense of the protocol. Certainly under the protocol this Commission can not take jurisdiction of a claim which is not owned by a German subject, and if, as has been stated, Piñedo, García & Co. were the owners in law of the property, and their German associates have only a right to an accounting for their contribution and its profits, they are not the legal owners of the debt or of any interest therein.

It appears by the code of commerce above cited that in case of failure of the "merchant"—*comerciante*—with whom they are associated they would be required to suffer the loss of their entire contribution of capital, if that should be the proportion of the total losses, after which they would be considered creditors pro tanto their contribution. It is therefore in law entirely uncertain whether they will receive, upon an accounting, any part of the claim against the Government.

In a case where all of the parties interested are foreigners, and therefore all of them are competent to associate themselves together in such a manner as has here been done, without need of or regard to the provisions of Venezuelan legislation, quite a different question would arise. The question, however, does not arise in this case, and it is not necessary for the umpire to decide it. He therefore expresses no opinion upon it. The item will therefore be disallowed without prejudice.

The claimant will therefore be allowed the amount of items 5 and 6, agreed to by the Commissioners at 33,958 bolivars, and 53,296.67 bolivars, allowed by the umpire on account of the debt of the State of Zulia, aggregating 87,254.67 bolivars, without interest.

CHRISTERN & CO. (LIQUIDATORS) CASE.

Assignees for the benefit of creditors considered purchasers for value and entitled to recover, although claim in its origin was not entirely German.

DUFFIELD, *Umpire:*

It is conceded that the claimants are the properly appointed and lawfully authorized assignees for the benefit of the creditors—*liquidadores*—of Minlos, Witzke & Co., of Maracaibo. The latter have a claim against the State of Zulia under an agreement entered into between the representative of that State and Brewer, Moller & Co., dated January 2, 1902, adjusting the amount of the debt of the State with the various members "of the commerce"—*del comercio*—of Maracaibo, for a loan enforced by the State of Zulia on behalf of and for the benefit of the Venezuelan Government.

The validity of the claim as respects Minlos, Witzke & Co. is adjudged by the decision of the umpire in the case of Beckman & Co.,[a]

---

[a] See p. 598.

No. 47, but it is claimed by the Commissioner for Venezuela that Christern & Co. can not recover in this case because one of the two partners of Minlos, Witzke & Co. was a Dane. The umpire is unable to perceive the force of this objection. By an instrument attached to the "expediente" Christern & Co., whom it is conceded are German subjects, are vested with a full and absolute title, legal and equitable, to the share of Minlos, Witzke & Co. in the fund in question. It is true Christern & Co. hold it in trust for the creditors of Minlos, Witzke & Co., and of course any surplus thereafter will go to the latter. But that does not affect the title which Christern & Co. have to the fund. It is a familiar rule of law that assignees for the benefit of creditors are bona fide purchasers for value, and that after the assignment the assignors have no title whatever to the assigned property, and Christern & Co. stand in this position. Certainly if Minlos, Witzke & Co. had sold and conveyed this claim to Christern & Co. the fact that one of the former was a Danish subject could not affect the latter's right to recover. It is true that the debt was of such a nature as to be nonnegotiable in the sense of the law merchant, and that Venezuela would, as against any subsequent holder of the debt, avail herself of any defense she might have against the original holder; yet it was assignable in law and capable of having the entire legal and equitable title to it transferred and conveyed.

In the opinion of the umpire, therefore, it is clear that Christern & Co. are the legal owners of the claim and, being German subjects, are entitled to an award by this Commission for the amount thereof.

The claim is therefore allowed at the sum of 28,135.85 bolivars, which includes interest up to and including the 31st of December, 1903.

BECKMAN & CO. CASE.

Central Government liable for forced loan by one of the constituent states the proceeds of which were used for the defense of the entire nation.
Where no rate of interest is specified only the legal rate is recoverable.

DUFFIELD, *Umpire*:

The claim is for 227,756.54 bolivars, composed of the following items:

	Bolivars.	Marks.
A. Debt of the Government of the State of Zulia	13,584.62	10,867.70
B. War duties on importations	10,772.24	8,617.79
C. Export duties	19,749.24	15,799.39
D. Loss on coffee and hides caused by prolonged storage	25,014.36	20,011.49
E. Interest on capital lying idle	50,496.08	40,396.86
F. Loss caused by the suspension of mail service	50,000.00	40,000.00
G. Losses in salaries, rent, etc	58,140.00	46,512.00

As to the first item (A) there is no disputed question of fact. The State of Zulia confessedly owes the claimant the sum of 13,584.62 bolivars. The amount due the claimant was agreed upon and officially published in detail in the Official Gazette of the State of Zulia of the 16th of February, 1900, together with the stipulation of the Government for its liquidation in monthly payments. Since the 20th of August, 1901, these payments have been suspended, and there remains of the original debt due the claimant the sum stated above.

The Commissioner for Venezuela denies the liability of his Government, because, in his opinion, the debt is that of one of the States of

the Republic of Venezuela and that the latter can not be held responsible. The expediente shows that the origin of the debt was forced loans made by the State of Zulia for the benefit of the National Government, and presumably by its direction. At all events, there is no denial that the money was expended for the benefit of the National Government, with its knowledge.

It is argued by the Commissioner for Germany that in any event the National Government is responsible for the debt of one of its States, and in support of this contention is cited the very able opinion of Mr. Robert Bunch in the *Montijo* case. (Moore on Arbitration, 1421–1447.)

In the opinion of the umpire it is not necessary in this case to decide the question. He prefers to put his opinion upon the concrete base, which is that in the efforts of Venezuela to suppress insurrection and put down rebellion she called upon the State of Zulia for assistance. In pursuance of this call the State enforced the loans in question. It now finds itself either unable or indisposed to make any more payments to the creditors on this account.

Under these circumstances, in the opinion of the umpire, it would be inequitable and unjust to the State of Zulia, as well as to the claimants, to remit the claimants to a suit at law against her. Morally and equitably, if not stricto jure, the Government of Venezuela is bound to repay the State of Zulia these moneys which were advanced for the common defense of the nation. The citizens of the State of Zulia can properly be called upon to pay their quota of the national debt, but it is manifestly unjust to assess upon them the entire amount of these forced loans, and absolve the other citizens of the Republic of Venezuela from the payment of their own proportion thereof.

The Commissioner for Germany, however, allows the claimant the full amount of this item of his claim, 13,584.62 bolivars, with the usual interest. This amount includes interest at 1 per cent per month, compounded with yearly rests, and increases the original amount of the item thereby 5,147.26 bolivars. The umpire is unable to concur in this finding. He does not find any warrant or authority in the proofs for compounding interest. Neither do the proofs show that under the agreement made on the 14th of February, 1900, between the representative of the government of Zulia and the parties who made the war loan for the purpose of adjusting the amount due, of which the claimant's share was 15,417.36 bolivars, there was any agreement for any rate of interest on the amount then agreed upon. There is also an entire absence of proof as to the rate of interest which the original loan was to bear. It is too clear to need argument that if no rate of interest is agreed upon by the parties only the legal rate can be allowed. This rate in Venezuela is 3 per cent per annum. Instead, therefore, of allowing the sum named by the Commissioner for Germany, the item is allowed at the sum of 12,186.54 bolivars, being the original amount of the loan, 15,417.36 bolivars, with interest from February 14, 1900, to December 31, 1903, less the payments made thereon and interest on those payments.

The umpire agrees with the Commissioners in the disallowance of Claim B, 10,772.24 bolivars, for the reasons stated in his opinion in the case of Christern & Co., No. 50.[a]

---

[a] Page 584.

Item C of the claim for 19,749.24 bolivars, in the opinion of the Commissioner for Germany, should be allowed at its full amount, but he gives no reason for that opinion. The Commissioner for Venezuela, without giving any reasons therefor, is of the opinion that this item should be disallowed. It appears from the expediente that the Government of Venezuela on the 16th of February, 1903, imposed an export duty of 2 bolivars on each 50 kilograms of coffee and 4 bolivars on each 46 kilograms of hides. It is not contended by the claimant that this duty in and of itself would have been injurious to them or was an unlawful exercise of power by the Government; but they claim that because of the closure of the river by the Government decree of the 15th of January, 1903, the duties fell upon coffee which would otherwise have been exported prior to the date of the decree. This claim, therefore, depends for its allowance upon the decision of the question of the liability of Venezuela for closing the River Zulia, and is disallowed for the reasons stated in the opinion in the case of Faber, No. 53.[a]

The remaining items of the claim—namely, D, E, F, and G—for injury to coffee and hides caused by the prolonged storage of the same, and interest on the capital lying idle during the closure, and loss caused by the suspension of mail service, and loss on account of salaries, rent, etc., also depend on the decision of the same question, and are disallowed.

The claim is therefore allowed at the sum of 12,186.54 bolivars, which includes interest to December 31, 1903.

FABER CASE.

(By the Umpire:)

Consular certificates admissible as evidence.[b]
International mixed commissions not bound by strict technical rules of evidence.

---

[a] See below.

[b] The question as to what papers are receivable in evidence before international commissions was extensively discussed by counsel for the claimant and respondent governments before the United States and Chilean Claims Commission of 1897, the briefs being summarized as follows:

The position of counsel for the United States upon this question is:
(1) That this Commission must receive *as evidence all* written documents and statements which are presented by either Government and must consider them in arriving at its conclusions.
(2) That these documents and statements are to be given such weight as they seem to be entitled to, both intrinsically and in view of surrounding circumstances and other facts proven in the case; and
(3) That the mere fact that they are *ex parte* may possibly affect their *weight* when contradicted by other proof, but can not possibly affect their *admissibility* as legal evidence.

Reliance was placed upon Article V of the treaty, stating that—

They (the Commission) *shall be bound to receive* and *consider* all written documents or statements which may be presented to them in behalf of the respective Governments in support of or in answer to any claim.

The United States counsel conceded that the civil law upon this subject was not as strict as the common law, as might be seen in the following citations:

French Civil Code, articles 1317–1333; Code of Civil Procedure (in force in Spain, Cuba, Porto Rico, and the Philippines), articles 577, 595, 601; Mexican Code of Civil Procedure, article 289; Colombian Civil Code, articles 1758–1766; Chilean Civil Code, articles 1699–1707; Louisiana Civil Code, articles 2234 (2231) to 2251; Walton's Civil Law in Spain and Spanish America, pages 346–348.

It was, however, contended further that all Government reports were so closely related to the claims as to be almost part of the res gestæ.

Citations were made from the Claims Treaty of 1794 with Great Britain. Treaties and Conventions between the United States and Other Powers, pages 383 and 384;

States through the territory of which navigable streams flow, although these streams rise in the territory of other States, have the right to close these rivers to navi-

Footnote continued.

the treaty of 1819 with Spain (Ibid., 1020); treaty of 1834 with Spain (Ibid., 1024); treaty of 1853 with Great Britain (Ibid., 446); claims convention of 1868 with Mexico (Ibid., 701); treaty of 1857 with New Granada (Ibid., 211); claims convention of 1866 with Venezuela, and that of 1885 providing for a rehearing (28 Stat. L., 1057), and claims convention of 1880 with France, act of Congress approved March 3, 1849, to settle claims of American citizens against Mexico (9 Stat. L., 393), and act of June 19, 1878, authorizing the Court of Claims to take jurisdiction of the Caldera claims (20 Stat. L., 172), for the purpose of showing that the universal diplomatic rule was that the commissioners should receive all documents or statements which might be presented to them on behalf of their respective Governments. Reference was had to the Caldera case, 15 Court of Claims Reports, 546–606, for the purpose of showing that—

International tribunals are not bound by local restraints. They always exercise great latitude in such matters (Meade's case, 2 Court of Claims Reports, 271), and give to affidavits, and sometimes even to unverified statements, the force of depositions.

The Meade's case, above cited, was quoted as authority for the fact that the adjustment of international claims should not and could not be subjected to the narrow technical rules of ordinary tribunals.

The treaty of Washington of May 8, 1871, Article XXIV, was cited to show that the Commissioners "shall be bound to receive such oral or written testimony as either government shall present," and that, as appears by Moore, page 728, the Commission decided that ex parte affidavits should be admitted.

Moore, pages 1435 and 1753, was cited as equally conclusive, the first reference being to the Montijo case and the second being to the claims of Pelletier and Lazare.

To the third point attention was called to the convention between the United States and Chile of November 10, 1858 (Moore, p. 4690), where the decision was of necessity made solely upon ex parte testimony.

Reliance was placed upon the Walker case in the Chilean Commission. All such letters as were introduced were strictly ex parte, and a decision of the Commission, dated December 22, 1897, was to the effect that a lengthy affidavit by Bacigaluppi was evidence, and in the Levek case Chile had introduced a letter.

Reference was made to the fact that some question arose before the former Chilean Commission, as shown by pages 152 to 155 of the agent's report, being raised in the Murphy case, and the Commission ruled that it was "at liberty to take affidavits into consideration and to attribute to them a limited value or no value whatever, according to circumstances," and to the fact that in the Read case, No. 13, agent's report, general affidavits were accepted as the foundation for an award.

Upon the same subject-matter, the agent for Chile filed a brief, in which, after citing the opinion of Mr. Hale, agent of the United States before the Anglo-American Commission, as shown on page 4 of his report, with relation to the disadvantage of the Government in defending claims, he maintained:

First. That the officers before whom the various affidavits filed in those cases were taken were not duly authorized to certify to the affidavits; and

Second. That affidavits can not be considered as evidence by this Commission. The Commission is governed by the rules of law existing in the two countries, which in this case are in harmony in regard to the nature of the evidence by which claims may be supported or refuted.

His brief further cited Article V of the convention of August 7, 1892, authorizing the Commissioners to decide "upon such evidence or information only as shall be furnished by or on behalf of the respective government," arguing that this emphasized the evidential character of the information to be furnished. He further cited the seventh article of the rules of procedure of the Commission established in 1893, showing that the claimant "shall be required to establish" all the material allegations of the petition "by legal and sufficient evidence." He relied upon Article XV of the rules of 1893, as follows:

The rules of evidence as to the competency, relevancy, and effect of the same shall be determined by the Commission, with reference to the convention under which it is created, the laws of the two nations, the public laws, and these rules.

From this he argued that the claimants should support the facts upon which their allegations were founded with legal and sufficient evidence. He argued against the propriety of accepting affidavits taken before ministers of the United States, secretaries of legation, or consuls, citing Calvo, Droit International, section 612, third edition; Heffter, Le Droit International Public, section 216, No. 2; Bluntschli, Le Droit International Codifié, article 221, and Field's International Code, article 172.

gation at their discretion, and no appeal will lie therefrom. This doctrine would seem to apply even though these rivers emptied directly into the sea instead of

Footnote continued.

As fortifying the opinion that ex parte proofs should have no legal weight, the Chilean agent quoted Greenleaf, volume 1, chapter 3, section 446, page 541, and as showing the necessity for notification to the other side, so that the witnesses might be cross-examined, he cited the Laws of Chile, Prontuario de los Juicios, law xxiii, title 16, paragraph 3.

As indicating the little weight to be given to ex parte evidence and the necessity for cross-examination are cited People *v.* Cole, 43 New York, 508; Revised Statutes, United States, chapter 17, title "Evidence;" Foster's Federal Practice, second edition, pages 502 and 1267; Greenleaf's Evidence, section 321, page 414; volume 1, section 164; Best on Evidence, page 83; Wharton's Law of Evidence, section 177; Wharton's Book 3, section 110, chapter 13, and sections 872, 873, 875, 879, 881, and 882 of the New York Code of Procedure; as also A. 425, A. 426, A. 430, A. 434 of the Code of Procedure of Louisiana, and section 2033 of the Code of Procedure of Californinia.

As showing that affidavits are not receivable in the Court of Claims, section 1083 of the Revised Statutes is cited, and 2 Court of Claims, 345, as well as the rules of procedure of that court.

As showing that ex parte affidavits were excluded by the Court of Claims, citation is made of Main *v.* U. S., 21 Court of Claims Reports, page 54.

Attention is called to the Shrigley before the prior Commission (Moore, 3711), in which depositions, not taken in accordance with the rules of the Commission, were suppressed, and showing that there was no appearance on the part of the claimant or notice for taking depositions.

The case of Murphy (Moore, 2262) was relied upon as showing that the kind of evidence under discussion should be received "not as evidence but only as elements which in certain cases may contribute to a limited extent, collateral or secondary, to confirm or strengthen a conviction appearing to be based on proofs of a more conclusive character," and the decision in the Thorndike case (Moore, p. 2274) is referred to as indicating the opinion of the Commission that such evidence lacked sufficient legal weight to warrant a decision against the respondent.

The French-American Commission, sitting in Washington from 1881 to 1884, it is said, citing from the Murphy case, adopted the same principle.

The agent admitted that official communications written in the discharge of official business should necessarily be admitted in evidence.

The agent for the United States replied to the foregoing brief, contending that the following propositions had been established:

1. The Commission is "bound to receive and consider all written documents or statements" presented by either Government as evidence.
2. This ipso facto makes all such writings, whether affidavits or mere letters, *legal evidence*, no matter what the ordinary rules of law may be concerning them, but leaves it open for the Commission to attach such weight to them as they intrinsically seem to deserve.
3. This rule, as established by the convention, is different (and is conceded by both sides to be different) from the rule either of the common or the civil law upon the subject, although the civil law seems to be much more liberal in this respect than the common law, as witness the case cited in the preceding brief from 159 United States Reports, page 204.
4. The rule now contended for by the United States is the only rule in diplomatic settlements, and the usual rule in commissions such as this, as witness the authorities, decisions, and citations from the proceedings of other commissions, and of the Court of Claims set out in the former brief.
5. The former commission under the present convention held in the Murphy case that ex parte affidavits were admissible, and in fact *used them as evidence*, but considered that the ones on file in that case were intrinsically improbable, and therefore a majority of the commission declined to permit their judgment to be controlled by them. In the Reed case, afterwards decided by the same commission, they *unanimously* treated similar documents as evidence, and believed the statements contained in them, and decided the case accordingly.
6. It is manifest, therefore, that the objection now made by the agent for Chile can not properly avail to destroy the effect of all affidavits and writings as evidence. It is likewise manifest that all such papers must be considered by the Commission, and each one weighed as to its individual merits and inherent probability.

Referring to the French-American Commission, he stated that upon verifying the reference all that appears is as follows:

The affidavit of Philibert Rozier referred to in the motion of the United States assistant counsel is stricken from the record.

He argued that it did not appear officially why it was so stricken out.

He further contended that letters and telegrams sent from one official to another were literally ex parte statements, and that all writings submitted by either Government should be received in evidence, carefully weighed as to their convincing force, and permitted to influence its decision much or little, or not at all, according as that convincing force is found to be present or absent in each particular case.

A majority of the commission made an award on the evidence in question in favor of the claimant.

debouching into an inland lake, as in the case under consideration, wholly within the territory of the State seeking to control the navigation of these rivers. This doctrine being applicable to the inhabitants of the State at the headwaters of the streams is all the more applicable to domiciled foreigners.[a]

GOETSCH, *Commissioner:*

The Department of Santander of the Republic of Colombia, with its capital at San José de Cúcuta, has been very poorly endowed by nature, since it lacks means, which pass exclusively through Colombian territory, to establish commercial communication with the ocean. The commercial traffic of the Department with the rest of the world can not be effected except through the port of Maracaibo—that is to say, by passing over Venezuelan territory. The traffic from the capital, San José, to the Atlantic Ocean takes place in the following manner: From Cúcuta to the Colombian port Villamizar by rail (the frontier custom-house upon the Zulia River); from Villamizar by the navigable river Zulia to its mouth in the Catatumbo River, near Encontrados (the frontier custom-house of Venezuela); from Encontrados continuing along the Catatumbo River as far as its mouth, in Lake Maracaibo; thence by Lake Maracaibo to the city of Maracaibo. A few leagues farther down from the port of Villamizar the Zulia River crosses the frontier line of Venezuela. At the Venezuelan railroad station El Guayabo the railroad from Uracá to Encontrados touches. The Lake Maracaibo and the Catatumbo River as far as Encontrados are navigable by steamers of considerable draft, while the river Zulia from Encontrados to the port of Villamizar only permits the passage of small steamers of a slight draft and other lighter vessels.

From time immemorial the Department of Santander has used that highway for the exportation of its national products, principally coffee and hides, and for the importation from abroad of those necessities which it is not able to produce. The importance of the commercial traffic by this route is shown by the fact that the commerce duties of Colombia received in Villamizar amount to from 680,000 to 800,000 bolivars.

A very considerable portion of this commercial traffic is carried on by German firms and German capital. We are treating here of the firms of Van Dissel & Co., Brewer, Moller & Co., Beckman & Co., Steinworth & Co., and Faber & Co., of Hamburg, respectively, from

---

[a] For a very interesting and exhaustive discussion of this question we refer to an article by Ernest Nys, published in the Revue de Droit International et de Législation Comparée, 1903, 2d series, Vol. V, p. 517, stating the limitations of the doctrine as laid down by the umpire, and citing:

Revue de Droit International et de Législation comparée, 1901, Vol. III, 2d ser.; Magnette, *Joseph II et la liberté de l'Escaut*, 1897, pp. 17, *et seq.*, 46; Charles de Martens, *Causes Celèbres du Droit des Gens*, 2d ed., Vol. III, p. 338 *et seq.;* Henry Wheaton, *Hist. of the Progress of the Law of Nations in Europe and America*, Vol. II, p. 192; Grandgaignage, *Histoire du péage de l'Escaut*, pp. 88, 89; Ed. Engelhardt, *Du Régime Conventionnel des Fleuves Internationaux*, pp. 24, 25, 27, 172, 182, 219; E. Carathéodory, *Le Droit International concernant les Grands Cours d'eau*, 1861, pp. 107, 116, 117; Wheaton, *Elements of International Law*, Vol. II, p. 86; Crommelin, *De Verplichtingen van Nederland als Neutrale Mogendheid ten Opzicht der Schelde*, p. 71; *Revue de Droit International et de Législation Comparée*, 1886, Vol. XVIII, p. 159, *et seq.*; *Annuaire de l' Institut de Droit International*, Vol. VIII, p. 272; Pierre Orban, *Étude du Droit Fluvial International*, 1896, p. 140; Baron Guillaume, *L' Escaut Depuis* 1830, Vol. I, pp. 353, 400; Bonfils, *Manuel de Droit International Public*, 2d ed., No. 524; Bluntschli, *Le Droit International Codifié*, art. 769; Piédelièvre, *Precis de Droit International Public ou Droit des Gens*, Vol. II, p. 375. See also Rivier, *Principes du Droit des Gens*, Vol. I, pp. 221, 225.

Maracaibo and San José de Cúcuta, besides the German stores in Maracaibo. This last enterprise is an exclusively German house, and performs its navigation by the lake and the rivers, with proper steamers and steel lighters, and in company with another transportation company, in which the firm of Brewer, Moller & Co. have an interest of 50 per cent, while all the other German firms, which almost all have their principal houses in Hamburg, busy themselves with the exportation of coffee and other products from Santander and the importation of merchandise to said Department. The German capital in these enterprises amounts to many millions of marks. These commercial relations, existing from very remote periods, were destroyed at a blow by an executive decree of the Government of Venezuela dated September 11, 1900. The decree is of the following tenor:

Commencing upon the day of the promulgation of this decree, the clearance of vessels which carry on river commerce along the Zulia and Catatumbo rivers is suspended in the coastwise custom-house at the port of Encontrados.

Because of this prohibition of the clearance of all vessels the commercial blockade with respect to the Department of Santander was established de facto. No vessel could thereafter pass by Encontrados either going up or coming down the river. Commerce was totally destroyed.

The Government of the German Empire has protested before the Government of Venezuela against said measure, which very seriously injured German interests. The officer at the imperial legation at Caracas, under the date of February 4, 1901, protested, as is seen by the following extract:

Mr. Minister EDUARDO BLANCO, etc.:

From an order received, I have the honor to notify your excellency that, according to the interpretation of the Imperial Government, the closing of the Catatumbo and Zulia rivers, because it interrupts the German commerce with Colombia, is contrary to the principles of international law, and that therefore the German Government should reserve to itself the right to hold Venezuela liable for the injuries resulting on account of said measure.

In his answer, dated February 16, 1901, the minister of foreign relations in Venezuela has upheld the legality of this measure, alleging the sovereignty of Venezuela as an independent state, but has agreed upon the existence of the commercial blockade as such, as follows:

Upon the stopping, temporarily, of the passage of commerce upon the Zulia and Catatumbo. * * *

To this the German legation replied, under date of February 19, 1901, repeating the protest already quoted.

Upon the 4th of March, 1901, the Government of Venezuela modified said decree as follows:

River commerce is permitted upon the rivers Zulia and Catatumbo, but only in lighters or canoes, and while new fears of disturbance of the public order should not require the contrary.

But after a few days the primitive state was restored by a decree of July 29, 1901, and by it the commercial blockade was restored by the decree of July 29, 1901, and reestablished in its full extent. The decree reads as follows:

The decree of March 4, 1901, which permitted river commerce along the Zulia and Catatumbo rivers from Encontrados by lighters and canoes, is rovoked, the decree of September 11, 1900, remaining in its full force and effect.

Under date of June 14, 1902, the following decree was issued:

Until the definite reopening of the port of Encontrados the way of Urena is temporarily open for the passage of merchandise between Cúcuta and Maracaibo, and vice versa, the way of Encontrados being open only for the coastwise service.

Finally, what follows was ordered by a decree of January 13, 1903:

ARTICLE 1. The decree of July 29, 1901, by which traffic between Encontrados and Puerto Villamizar was absolutely forbidden, is revoked.

ART. 2. The decree of March 4, 1901, which permitted traffic between Puerto Villamizar and Encontrados by means of lighters and canoes only, is made effective.

The traffic by lighters and canoes, to which the foregoing article refers, shall be carried on by Guayabo, transporting by rail the merchandises which are exported.

ART. 3. Navigation of steam and sailing vessels, carrying merchandises in transit for Colombia, shall hereafter be permitted only by the ports of Maracaibo and Encontrados in accordance with the laws which are in force in the premises.

Lastly, another decree, under date of April 3, 1903, was issued, the second article of which reads as follows:

The effects of article 2 of the decree of January 15, already cited, are revoked with relation to the importation of merchandise in transit for Colombia by said route, until the causes which make said transportation undesirable may be removed.

This state has continued until the present day.

By the commercial blockade established there, which now can not be considered as totally removed, but which in any case was maintained in full force for about two years, the interests of German firms and those of German commerce have suffered serious injury, as has already been shown.

The damages consisted principally in the following: The crops of coffee bought of German houses in Cúcuta could not be exported during the time of the blockade, which lasted two years. The coffee had to undergo a long storage in Villamizar, exposed to the warm climate and extreme humidity, which occasioned a loss of a part of it and the payment of high rates of insurance. The capital invested in coffee ceased to produce interest, thus also the capital invested in German houses in Cúcuta could not be utilized later on and could not produce profit, while the general expenses continued to run, such as the salaries of employees, the rent of the commercial establishments, etc. The imported merchandise from Europe and the United States suffered like injury, which could not be transported from Maracaibo to Santander, these latter remaining stored in Maracaibo, where they suffered deterioration in part, and later it was necessary to sell them at a loss. A part of the general expense of the business of Maracaibo was disbursed without return. The vessels and steel lighters belonging to the transportation companies of German houses, which carried the commerce to Villamizar, could not fulfill their object, and remained loaded, without being used, and were injured to some extent by the brackish water of Lake Maracaibo. All these injuries are immediate consequences of the stoppage of the commercial traffic.

Let us pass on to prove how Venezuela may be made liable for them.

(*a*) In the first place it is undeniable that a sovereign state holds absolute authority over its rivers and water courses until these touch the frontiers of other states. This principle is nevertheless limited in two senses by international law. When a river constitutes the only way of communication, indispensable for the subsistence of another nation, or part of it, its use can not be entirely prohibited. (See

Heffter's International Law of Europe, Berlin, 1867, sec. 77.) Besides, the use of navigable rivers for traffic with other friendly peoples when they cross independent states can not be prohibited when their use is not offensive. After all a state can not deny to another nation the inoffensive use of routes by land or water within its territory without committing an act of hostility, and no State can exclude another from commercial communication with the market of a third without committing an offense and injury unless the latter desires and puts in force the exclusion. (See Heffter, p. 63; Puffendorf, T. N., III, 3, 6; Groot, T., 2, 13; Vattel, II, 123, 132–134.) These international maxims are the creation of close association between nations. They have been applied in treaties of distinct periods. (Treaty of peace of Paris, 1814, art. 5; the official record of the Congress of Vienna, art. 8, 117–118; art. 15 of the treaty of peace of Paris, dated March 30, 1856; art. 1 of the provision of navigation for the Danube, dated November 7, 1857; treaty between Spain and Portugal, August 13, 1835, concerning the free navigation of the Duero; treaty of reciprocity between Canada and the United States dated June 5, 1850; art. 4 of the treaty of the Republic of Argentina with other powers dated July 10, 1853; and others.)

On account of everything that has been said it is considered as an international doctrine that the navigation of rivers which flow through portions of several States together with their affluents shall be free from the point where they first become navigable to where they empty into the sea, so far as commerce is concerned—provided this latter be in itself free—should not be denied to anybody; besides, each riparian state shall exercise its authority within the limits of its fluvial domain, impeding as little as possible the liberty of navigation. (See with respect to this Phillimore, pp. 189, 191, 192, 195, 204, 207, 209, et seq; Grotius Book II, chap. 2, sec. 12; Wheaton, Pt. II, chap. 4, sec. 11; Heffter, p. 63, 147; Carathéodory, du Droit International, concerning large water courses, p. 155–158; Moore, 1718.)

As there was no war between Colombia and Venezuela the latter had no right to prohibit the foreign commerce with a Colombian port.

The principles above stated have not been limited to the territory of European states, but have found application in states and circumstances outside of Europe. It was especially the part of England at a former time to make this principle respected and to defend it energetically against Spain with respect to the traffic on the Mississippi. (Phillimore, sec. 170.) Thus also the United States of America have invoked against England the application of the principles above set forth and attained their recognition with respect to the commerce of the St. Lawrence River, the mouth of which is situated exclusively in Canadian territory. It is true that England maintained at first an interpretation of the expression of natural right should not be given to the principles of the treaty of Vienna, but that they should be considered as the conventional arrangement of an exceptional privilege granted by the contracting parties, and the enjoyment of which did not belong to a third noncontracting party. Nevertheless this attitude of England was not in harmony with her own opinion in the claim of the Mississippi (see Phillimore, sec. 170), and it was also rejected by the United States with reason and success. Secretary of State Clay, in Washington, ordered the American minister, Gallatin, under date of

June 15, 1826, in London, to oppose the following to the English pretension (see Mr. Secretary Clay's letter to Mr. Gallatin, American minister in London, June 19, 1826, session 1827–28, No. 43, Am. State Papers, For. Rel., vol. 6, p. 764); that the provisions of the treaties should not be considered as of a merely conventional character, since ordinarily it would be necessary to give them a positive and natural right in order to settle differences; that the right to navigate the ocean had also been the subject of rules and divers treaties; that the provisions of Vienna and other similar ones should rather be considered as an homage which men render to the great Lawgiver of the Universe by which His works should be free from the chains that human caprice strive to put upon them. Also, among other German publicists this opinion prevails. Thus Wurm (see Five Letters upon Free River Navigation), has called the treaties above-mentioned a concentration of the great principles which are gradually illuminating the reason of nations. (See also Carathéodory, pp. 139–141.) England was compelled to yield, although only after some years, by a treaty signed on June 5, 1854, by Lord Elgin, which recognized in article 4 the freedom of navigation upon the St. Lawrence River. (Treaties and Conventions between the United States and Other Powers, p. 451.) The Argentine Republic took a similar course upon another occasion by confirming by a treaty of July 18, 1853, the freedom of navigation of the Paraná and the Uruguay for the ships of all nations.

If these principles are applied to the present case, it follows that the blockade of commercial traffic upon the navigable rivers Catatumbo and Zulia, which cross the territories of Venezuela and Colombia, was an act contrary to the law of nations, and therefore illegal. As is seen from the correspondence exchanged with the German legation, Venezuela based her proceeding upon the declaration that her relations with Colombia were at that time strained and that the closing of the rivers was a necessary measure for the national safety. Nevertheless, this excuse is not admissible. There has not existed a true state of war between Colombia and Venezuela, and Venezuela herself (November 20, 1901), in answer to an inquiry of England, expressly stated that a state of war did not exist. (See the English blue book of Venezuela, No. 1, 1903, p. 55.) But neither should there have occurred, even in the case of a state of war or the probability of war-like complications, a complete commercial blockade, or, say, total interruption of neutral commerce upon navigable rivers. (See Wurm, Freedom of River Navigation, p. 55, et seq.; art. 131 of the convention between the German and French Governments upon the control of the navigation of the Rhine, dated August 15, 1804; the Clayton-Bulwer treaty between the United States and England; art. 6 of the treaty between Argentina and the United States of America, England, and France, dated July 10, 1853.)

Venezuela, if she had the right to control the commerce upon the Zulia and Catatumbo, as her safety required in view of the strained relations with the neighbor Republic, could have inspected and regulated the commerce of merchants—the first in order to prevent the transporting of Venezuelan revolutionists or Colombian troops, and the second in order to submit to register vessels suspected of transporting arms or contraband.

To exercise greater control, she could compel vessels or steel lighters

to be accompanied by constabulary or troops as far as the Venezuelan frontier, and to receive them there again upon their homeward journey. The absolute blockade, or, say, the prohibition thereby resulting to the exportation of coffee, which was German property, and to the importation of German merchandise, appears to be an act not justified by the circumstances, and therefore inadmissible and illegal according to international law.

(*c*) The Government of the German Empire, because of what has been said, was entirely right in protesting to the Government of Venezuela against the commercial blockade, and to reserve to herself the right of enforcing an indemnity, since a state which, by an illegal act, injures the legal interests of foreign subjects should make reparation for the damage caused.

The Government of Venezuela has expressly recognized its liability in the protocol of peace for claims presented up to that date, and therefore also for claims arising out of the commercial blockade. Because of what precedes the German Commissioner asks of the honorable umpire that he fix the liability of Venezuela in principle for such damages as may be proved to have been suffered by subjects of the German Empire because of the commercial blockade.

ZULOAGA, *Commissioner:*

In the extreme west of the Republic of Venezuela is the lake of Maracaibo, a beautiful sheet of fresh water, entirely surrounded by Venezuelan territory. The lake communicates with the port of Maracaibo, or the Gulf of Venezuela, by a narrow channel, about 1,500 meters wide, which forms the two islands of Zapara and San Carlos. In the eastern extremity of the latter is situated the fortress of San Carlos, which guards and defends the entrance to the lake. Although it is not provided yet with modern pieces of artillery, it serves its purpose when necessary, and up to now no other ships except those which the master of the country has seen fit to allow to enter have plowed the lake. The whole of Lake Maracaibo belongs absolutely to Venezuela, and it has not occurred to any nation to throw doubt upon this.

The navigation of this lake, which is interior navigation, has never been done except by Venezuelan ships. On the northern part of it is found the city of Maracaibo, the only port of that region equipped for foreign commerce. Here only foreign ships touch, which must not have more than 10 feet draft, without running a great risk of stranding on the bar. There at the foot of the lake toward the south the river Catatumbo empties, which river belongs almost exclusively to Venezuela, since only a small portion of it belongs to Colombia. The Catatumbo has, generally speaking, in Venezuelan territory a depth of 5 feet. It has never been navigated except by Venezuelan river boats. At a distance of about 100 kilometers from its mouth in Lake Maracaibo the Catatumbo receives the waters of the Zulia, a river which rises in Colombia, in the State of Santander, which ordinarily has not more than 2 feet of water, especially in Colombia, and in summer still less. This river has never been navigated in Venezuelan territory except by Venezuelan vessels (boats or small steam launches).

The commerce which Colombia carries on upon this river has had a certain development since 1875, when the wagon road from Cúcuta to Villamizar was built, and later, during the years 1881 to 1882, when

the railroad was built between the same places. Colombia has never been able to consider that she has a perfect right to carry on commerce through the Zulia and Catatumbo, since at present she has no treaty with Venezuela, and Venezuela has not recognized that right directly or indirectly. By Law XXIII of the Code of Hacienda, Venezuela has allowed commerce in transit from Colombia, but in a precarious manner as to the latter Republic, because article 1 of that law expressly says that the passage of merchandise by the port of Maracaibo destined for Catatumbo is *permitted*.

Transitory commerce can therefore be prohibited by Venezuela at any time, as she is not obliged by any treaty to permit it. That commerce in transit Venezuela regulates in a detailed manner, and the importation of foreign merchandise through the port of Maracaibo is subject (art. 2, Law XXIII, cited) to all the formalities required and penalties established in the law of the government of customs for merchandise coming from foreign countries destined for Venezuela and to the provisions which are therein set forth. This commerce in transit is carried into the interior of Venezuela by two roads, either by the river Catatumbo, and later shipped over the railroad of Táchira, or in barges or small steam launches on the Zulia, which in reality can not properly be done except in the rainy season, when the river is sufficiently deep.

Venezuela, as a sovereign nation, regulates this commerce in transit in its territory as it sees fit; it determines the roads which must be used; it establishes the rules and prescriptions which it believes proper for its security or its interests. It is a matter exclusively its own, concerning which it has to give account to nobody. In the exercise of its right by virtue of necessities of public safety and order, well recognized and well appreciated by this Commission, the Venezuelan Government has issued a series of decrees regulating this transit, especially concerning the navigation on the Zulia. These decrees are those of September 11, 1900; March 4, 1900; July 29, 1901; June 14, 1902; January 15, 1903, and April 3, 1903. By virtue of them commerce upon the river as far as Colombia has sometimes been stopped. Other times it has been permitted by barges and canoes, but not by steam launches. This happened especially after the invasion of Rangel Garbiras with Colombian troops on the 25th of July, 1901, and because of the necessity to guard this road, so important to the defense of the territory.

Colombia at first sought to obtain from Venezuela the revocation of the decree that prohibited traffic upon the Zulia, but Venezuela answered her that she could not allow this traffic while the motives of public order which had given rise to the decree existed. After that the breaking off of diplomatic relations between Venezuela and said Republic took place, and such a serious aspect was assumed that the frontiers were guarded by armies of the respective States, and only the civil war which existed in both countries avoided, perhaps, the great calamity of a war being declared between the two sister nations. The matter of commerce in transit between the two nations is still complicated, on account of questions of boundary not yet settled, and it occupies the attention of both countries.

In this condition of affairs Germany intervened and pretends to assume for herself the cause of Colombia and force Venezuela to open

the Zulia route, under the pretext that there are some German merchants in Cúcuta who are injured by the Venezuelan decrees. It is impossible to imagine intervention by a third party more unreasonable and unlawful.

The question is between Venezuela and Colombia, and if decided can only be decided by those two countries alone and exclusively, and I must emphatically deny the allegation of the Commissioner for Germany and affirm that it is entirely contrary to the tenor and spirit of the Washington protocol and the powers vested by it in this Commission; that according to this treaty Germany is not authorized to put in dispute any matter which may compromise the sovereignty of Venezuela nor put in dispute her present legal status which gives her exclusive sovereignty over her rivers and lakes. To sustain a claim for injuries to Cúcuta merchants with the reasons adduced, to the effect that the river Zulia must be opened to international commerce, is to surreptitiously introduce questions as to the sovereignty of Venezuela into a tribunal which is called upon to take cognizance only of matters of fact, in conformity with absolute equity, which precisely supposes the exclusion of those questions which exact another kind of study and another standard of judgment.

If there should possibly be a controversy between Venezuela and Colombia in regard to the matter, the consequence of this surreptitious intervention of Germany would lead to a legal precedent being found in the question which is submitted to the umpire, a precedent which would be a very singular one in the relations between the two republics, whichever way it might be decided.

But in this matter there can be no controversy. The right of Venezuela is clear, and the action of Germany appears to tend towards nothing less than to make Venezuela tributary to Columbia by virtue of supposed principles of international law concerning the navigation of rivers.

I reject, therefore, expressly and catagorically, all this argument of the German Commissioner as unfounded, and since the question of George Faber has been submitted to the umpire, I maintain that he has no jurisdiction to take cognizance of the matter in the form which the Commissioner of Germany contends, because this Commission has no power to overlook the rights of Venezuela.

Venezuela exercising her right has regulated, in the manner which it has considered proper, the commerce in its territory in its passage to Colombia. Therefore no liability of the State ensues for consequent damages which an individual might suffer by virtue of these general provisions. If some Germans have suffered material damages, perchance Venezuela and its Government have suffered greater ones in enforcing decrees which it judges necessary for the moment. When the German Empire, by virtue of its political policy, curtails amicable relations with any nation said measure of reprisal undoubtedly injures individual interests, and I do not believe that thereby it is obligated to make any reparation.

To the argument of the German Commissioner sustaining the claim of George Faber, who says that he has been injured by the decrees which have regulated the commerce in transit, it is sufficient for me to set up the right of Venezuela to enforce laws and regulations in her territory as she sees fit.

Nevertheless, in order to show to what extent the argument of the

Commissioner of Germany is without foundation and to what extent the condition set up by Germany is unjustly oppressive, I am going to make some general observations.

That argument has as a foundation that, in accordance with the principles of international law, the navigation of international rivers is free, and that Venezuela in shutting off the commerce on the portion of the river flowing into the ocean (at the mouth of the river) has violated the law of nations.

In order that this reasoning might have any force it would be necessary in the first place for the river Zulia to be considered as an international river, but this river does not flow into any open sea—an essential condition in the case—but into the Catatumbo River and the Catatumbo into Lake Maracaibo exclusively the territory of Venezuela, and closed in accordance with international law to international commerce. It would be necessary, in the second place, that the river should, properly speaking, be navigable, and such a thing could never be said of a river which has a depth of 2 feet, and even less, in the dry season.

The Rhine has a depth at Bazel of from 1½ to 3 meters, and it is only, properly speaking, navigable from that place. The depth farther down is several meters. The Danube has, even in Donauwerth, a depth of 2 meters and 2.35 meters, and nearly 50 meters in the port of Hierro. These rivers are, properly speaking, navigable. Lastly, it would be necessary that Germany should have been navigating the Zulia with German vessels, in order to carry on commerce with Colombia, and this is not only not alleged, but is not physically possible, because a trans-Atlantic steamer could not navigate even the Catatumbo. The pretense therefore narrows itself down to holding that Venezuela is obliged to carry on with *Venezuelan vessels* the commerce in transit with Colombia upon the river Zulia because there are in Cúcuta and in Maracaibo some merchants to whom this would be convenient, and therefore Germany demands it of Venezuela, making her liable in case she does not agree to it.

The theory that navigable international rivers are free to navigation has not been admitted as a general rule of the law of nations. No nation up to now has recognized this absolute principle or this obligation as a perfect one, and in the cases where it has been agreed to by nations it has always been by virtue of special treaties by which free commerce, such as the Commissioner of Germany desires to establish, has never been admitted. Not even in the Danube does such a rule appear to have been established, since in accordance with the treaty of Vienna of 1837 the free navigation does not exist except with vessels which enter from the sea to the Danube, or if they come from the Danube to the sea. (Bluntschli, International Law codified, sec. 314; Pradier-Fodéré, vol. 2, p. 295.)

To admit, as the greater part of the authorities do,

says Pradier-Fodéré,

that navigable rivers which are in communication with the open sea

(which is not so in this case)

or which separate or traverse various states are to-day open in the time of peace to the ships of all nations would be to accept hope for reality. The reality is that absolute freedom of rivers, that which is based upon the equality of all nations and which comprises all the direct tributaries of the sea, is not only not generally recognized and adopted, but it is still in dispute. (Pradier-Fodéré, vol. 2, p. 300, sec. 749.)

And Fiore, after discussing the diverse and contradictory opinions of the authors, says:

These few citations suffice to show how divergent the opinions of the authors are, who in a large part are our contemporaries, with respect to the navigation of rivers, and how little the theory can serve to regulate the practice. They recognize the right to use the navigable river for the interests of commerce, but they declare this right to be imperfect, and they accord to states through whose territory they pass the right to declare themselves proprietors of that portion of the river which has its bed in their territory and to dictate conditions to those who desire to navigate it.[a]

The theory of free navigation of rivers (which strictly can not be understood to be what has been asserted in this case) is not, therefore, recognized as a principle of international law, and, in any case, Venezuela has not recognized it with respect to Colombia, and it is proper to bear in mind here the ideas of the Hon. Mr. Duffield, umpire of this Commission, in one of his former opinions:[b]

International law is not law in its usually defined sense. It is not a rule of conduct prescribed by a sovereign power. It is merely a body of rules established in custom or by treaty by which the intercourse between civilized nations is governed. Its principles are ascertained by the agreement of independent nations upon rules which they consider just and fair in regulating their dealings with each other in peace and in war. They reach this agreement by comparing the opinions of text writers and in precedents in modern times, and these ultimately appeal to the principles of natural reason and morality and common sense. It therefore rests solely upon agreement. Obedience to it is voluntary only, and can not be enforced by a common sovereign power. Any nation has the power and the right to dissent from a rule or principle of international law, even though it is accepted by all the other nations. Its obedience to the rule can only be compelled by an appeal to its reason and love of justice, or by the superior force of the particular nation or nations whose interests are involved.

In conclusion we must say that the theory of the free navigation of rivers is in no way applicable to the case under consideration, and that it is a measure of interior order of Venezuela which the latter has decreed in her territory by virtue of her sovereignty. To overlook this right is to do her an injury, and it is then not *Venezuela* who has violated the law of nations, closing the passage of the Zulia, which many motives of political well-being dictate, but *Germany* overlooking the legitimate rights of a sovereign nation. (Bluntschli, International Law Codified, art. 81 and art. 472.)

The obligation of observing justice with respect to other nations, at all times and under all circumstances, constitutes for a state one of those perfect and imperative duties which none can deny. (Calvo, Mutual Duties of States.)

The liberty of commerce has been invoked, but "the liberty of commerce is not an absolute principle; it may be subject to various restrictions." It is not possible, for example, *to seek to carry on commerce in the territory of a state against its will;* and the exercise of the right to carry on commerce necessarily presupposes the express or tacit consent of the state in whose territory one proposes to institute traffic by way of land or sea. The internal political policy of each state dictates means that must be taken. Should it open its territory freely to foreign commerce? Should it make this commerce subject to justified conditions on account of considerations of public interest, and to limitations, for example, established on account of a fiscal interest or an object of safety and health, etc.? It is impossible not to admit that every state has the right to regulate every class of commerce in accordance with

[a] Sec. 773. [b] Page 555.

its intention, and it is necessary to conclude that it is entirely free to establish every measure that it may believe conducive to this end. The territorial sovereign may prohibit the injurious branches of commerce; subject the traffic of foreigners to certain rules; *close places or provinces to foreign commerce;* impede the importation or exportation of certain merchandise; favor the national products, imposing upon foreign products different duties; raise or lower the tariff as it believes proper; determine the way of importation or exportation; map out the road which foreign products must follow into its territory, submit them to the necessity of bond; decide of the desirability to favor foreign duties by treaty, by the creation of free ports or like establishments; to accept for itself certain relations which do not affect either the right of independence or the progress of interior development of the state, etc. In its turn each state which carries on commerce itself or by means of its nationals outside of its boundaries ought to submit itself to the restrictions which that sovereign may make upon the liberty of commerce. To respect the rights of others is to assure the respect of one's own rights. *Not to trample upon the liberty of others is to give more force to one's own liberty.*

The case that is submitted to the umpire is the claim of George Faber, of Cúcuta. (In the claims of the firms in Maracaibo the claim is even more unjust, if possible, since they are individuals domiciled in Venezuela and subject to all provisions of public order.) Is it worth while for me to make an examination of the proof of the claimant Faber, when I reject the principle upon which it is based? Since the Commissioner of Germany appears to accept the truth of the facts, I shall make some passing observations concerning them.

The claim is proved by the declaration of two witnesses of Cúcuta, who say that they have seen the books of the house of Faber, and that the data upon which the claim is based is in accord with these books, and that the estimates which are made correspond, according to their understanding, to the truth. The books of merchants are evidence against them, but not in their favor. (1273, Venezuelan Code of Commerce.) This is a general principle of law, and it is natural, since it is not possible to believe that a person can make proof alone. Amongst merchants their books are of value, because each one presents his own; but in a particular case their books can not be presented in opposition to the state, and still less in opposition to a foreign state. I do not know who Faber is, and whether this proof is or is not ad hoc. Besides, the consul is not the legitimate authority in Colombia to certify to an acknowledgment. The local authorities are such, and we do not even know who these witnesses are who say they have seen the books. For my part, I consider this a claim which has been submitted absolutely without proofs, and it might be said that it is not, properly speaking, a claim in form, as it evidently is not. With respect to several items, such as one which refers to the correspondence which is said to have been withheld, I do not believe it worth while to make a further examination; but I should observe that if the road through Villamizar was closed, there were others, and therefore the fact itself upon which the claim is sought to be sustained is false.

GOETSCH, *Commissioner* (second opinion):

The German Commissioner believes that he has exhausted the question of international law in his opinion, which is in the hands of the honorable umpire, and it only remains for him to answer the opinion of the Commissioner of Venezuela, as follows: The fact that Lake Maracaibo is exclusively within Venezuelan territory in no way changes its condition as a natural continuation of the rivers Zulia and Catatumbo, the waters of which, accompanied by the vessels which float thereon, lead to the ocean. The question as to whether by international law a foreign flag is authorized to use a lake or river, when there is no question of coastwise trade, is not to be decided here. Rather there is under discussion only the question of the right to restrict neutral commerce from passing thereby to a part of Colombia which has no other means of communication.

The depths of the waters of both rivers is a matter of small importance so long as their courses shall be considered as navigable in international law, as is undoubtedly so, since small steamers navigate them as far as Port Villamizar, in Colombia. This international river route which unites two independent states has been considered before as such by Venezuela, and upon it commerce and traffic from time immemorial have had a right to pass, as is seen from the report delivered to the honorable umpire, published by Venezuela, at Madrid, 1884, page 10.

It is seen, moreover, from the Yellow Book, likewise in the hands of the Hon. General Duffield (Caracas, 1900, correspondence of the legation of Colombia, pp. 3, 4, 7, 13, 14, 15, 16, 23, 25, 27, 29, 42, 51), that the least doubt does not exist on the part of the Colombian Government with respect to the judicial question, and that it has always con tended for itself the right of free river navigation.

From the right which Venezuela has to supervise and regulate commerce in transit with Colombia in the interest of her own safety, and because of her traffic, as is provided in the code of Hacienda, the right to decree the complete commercial blockade can not be deduced.

The insinuation that Germany in representing the respective claims of her subjects is partial in favor of Colombia and proposes to take the chestnuts out of the fire for that Republic should be disputed. If a measure directed in the first place against Colombia injures German interests—and it *does* injure them seriously—it is only duty which compels the German Empire, and which the constitution imposes upon the Imperial Government, to secure protection of the rights of its subjects abroad. From a note of protest upon the matter in question, addressed to the Government of Venezuela by the Imperial Legation, it will be seen, moreover, that Germany only desired to make Venezuela liable for the blockade in so far as injuries to German commerce and interest might result therefrom. It has always been a political principle of the German Empire not to interfere in differences of two foreign nations.

With respect to the objection to the jurisdiction made by the Commissioner of Venezuela, it is proper for this Commission not to annul the decrees of the Government of Venezuela which order the commercial blockade, but to submit to a determination whether Venezuela shall pay the damages which the German firms claiming because of the blockade have suffered.

These claims are of the same character as all the others. They are demands for indemnity directed against the Republic. By article III of the protocol of February 13 of the present year there were submitted to this Commission for its decision German claims against Venezuela which were not made special exceptions.

The Government of His Majesty the Emperor of Germany, long before the conclusion of the treaty in question, had called the attention of the Government of Venezuela to the injuries suffered by German interests because of the commercial blockade and to the prospective claims. The contracting parties therefore ought to have further limited in the protocol the jurisdiction of this Commission in order that the objection to the jurisdiction made by the Commissioner of Venezuela could be considered justified. The Commissioners, therefore, and the umpire, because they have not reached an agreement, have the right and are bound to determine the claims in question in order to bring within the scope of their deliberations the admissibility of the acts of the Government of Venezuela.

In order to substantiate his opinion the Commissioner of Venezuela makes reference to an opinion rendered in another case by the honorable arbitrator in accordance with which international law is not a law nor a rule which can be imposed upon a state whose opinion differs from general international law. This in itself will not be disputed, but since Germany and Venezuela have agreed to adjust the claims of the subjects of Germany by means of arbitration, it is the duty of this Commission to apply to the different cases the law of nations, such as the Commission and not Venezuela understands it to be. By the treaty Venezuela has renounced the right to decide the claims in such a manner as she understands international law. Let it be further considered that equity is to serve as a rule for the decisions of this Commission. The German claims are equitable, since the claimants have suffered serious injury, because of the governmental measure adopted exclusively in the interest of Venezuela.

The fact that Germany is not a riparian state of the rivers Zulia and Catatumbo appears of little importance, since the commerce upon international rivers is open for all nations, according to the opinions of the best known jurists in international law. Besides, the German claimant firms are located in Colombia and Venezuela. All the firms in Maracaibo have branches in Cúcuta. There is question, therefore, of the rights of the inhabitants of the riparian states, since foreigners enjoy the same rights as Venezuelans and Colombians with respect to commercial law and navigation in Colombia and Venezuela. The common neutral use of the waterways which unite Venezuela and Colombia can not be denied them, a right which on the part of Colombia has been exercised since time immemorial and which Colombia has claimed for herself even after the decree of the commercial blockade.

To the final objection of the Venezuelan Commissioner, that there remained open to the firms an overland route, answer should be made that the same objection was made without success by England with respect to the United States of America, upon the opening of the St. Lawrence River. Overland communication is not a river route. By the report, a copy of which is presented herewith, it is seen, moreover, that freights overland were not open except by a decree of June 14,

1902, and they were so high that the adoption of this means of communication was equivalent to a complete stoppage.

With respect to the claim itself of G. Faber, it is seen, from the nature of the matter, that the damages suffered by German firms because of the commercial blockade could be individually proved and judicially substantiated only with difficulty. The principal proofs would consist of the books of the houses and the declarations of the claimants, and to give credit to these is a right which the supplemental convention gives to the Commission, as the honorable umpire has decided upon various occasions. The firm of Faber & Co. is a respectable German house of Cúcuta, the head of which is the consul of Germany. The items contained in its books merit entire belief, since it can not be supposed that the firm would have falsified its books for the purpose of presenting a possible future claim. The exactness of the data furnished by the firm upon which the amount of indemnity is based has been certified to by two experts, after an examination of the books. The German Commissioner, therefore, does not doubt that the facts upon which the estimation of the damage is based are true. The Venezuelan Commissioner objects that, according to the laws of Venezuela, the books of a commercial establishment are only regarded as proof when they serve to give evidence against the merchant. In accordance with the supplemental convention, Venezuelan legislation shall not be considered. Besides, by virtue of the principle of free estimation of proof, which no doubt also serves as a rule for a Venezuelan judge, it ought to be denied that in no case can the books of commercial houses be presented as means of arriving at the truth in favor of merchants. Everything depends upon the circumstances of the particular case. The judge *may* give credit to the items of the books; he *must* do so in so far as they militate against the merchant.

I. With respect to the different parts of the claim, I reject the first part, not because I consider the demand unjust, but because it is impossible to determine approximately that a portion of the labor of the employees was superfluous because of the commercial blockade.

II. What has been said with respect to item 1 is also applicable to item 5. It can not be calculated or estimated that part of the stores could not be utilized because of the blockade.

III. I consider item No. 3 well founded. The loss of interest upon money invested in crops of coffee which existed before the blockade was made effective is a true damage occasioned by the blockade, which must have resulted and ought to have been foreseen. The blockade had as an object the damaging of the Colombian exportation to force this State to make concessions in the question of boundaries and other matters. The injury arising for this reason and occasioned to German property ought, therefore, to be repaired. As the claimant asserts, and as it is also well known, money in Venezuela and Colombia can only be procured at the rate of 12 per cent, and the loss of interest estimated at 12 per cent does not seem exaggerated.

IV. The extension of insurance against fire upon the coffee held in Puerto Villamizar, an extension which was made necessary by the commercial blockade, ought likewise to be considered as a direct damage occasioned by the Venezuelan attitude, and therefore to be satisfied.

V. The same is true of the damage which the claimant house suffered from the storing of green coffee in Villamizar. The truth of the facts is moreover proved by the certificates of the Chamber of

Commerce of Maracaibo and well-known merchants of that place. Reference is made for the present to the respective documents in the record relative to the claims of Beckman & Co., Brewer, Moller & Co., and Van Dissel & Co.

VI. What has been said under III is also true with respect to part VI and VII of the claim.

VIII. The duty of exportation upon coffee seems to me to be established with the object of burdening coffee which came from Colombia for exportation after the special reopening of the traffic upon the Zulia and Catatumbo rivers. It is clear also that if this Colombian coffee could have been exported in time, which was not possible because of the commercial blockade, it would not have had to pay the Venezuelan duty, since the duty was not established until February of the present year. I believe, therefore, that this claim can be maintained also. Nevertheless, if the honorable umpire considers it as a remote damage, I shall be obliged to agree in the rejection of the demand.

IX. The stoppage of all postal correspondence coming from and going to Cúcuta is the direct consequence of the commercial blockade, and, like it, is an illegal act. The stoppage of the mail, which is more clearly proven by the certificate of the German consul in Maracaibo under date of August 14 of the present year, is in violation of the treaty of the Universal Postal Union, to which Venezuela and Colombia are parties. The fact does not require any proof that commercial interests must have suffered serious injury because of this stoppage. I have attempted to obtain from the claimants detailed specifications of this damage and the Imperial German consul has answered me as follows:

> After having conferred with the interested parties with respect to the proof of the amount of damage occasioned by the interruption of the postal services, I take the liberty of communicating to you their opinion * * * that it is very hard, and perhaps impossible, to obtain it in any concrete form. One of them lost one or more credits abroad, which were withdrawn because dispatches could not be sent to cover them, nor * * * could he even answer the letters of demand and warning * * * which did not reach his hands. Another, who had a branch house or friendly relations along the coast, found himself obliged to satisfy at a great loss the demands of his creditors and was hardly able thus to preserve his credit. From a third proofs and valuable documents were stolen. Under these circumstances the interested parties believe that the umpire ought to decide this point, taking into consideration all circumstances possible, the importance and extent of the commercial enterprises and each one of the commercial houses, as a civil judge does in cases of a demand for indemnity for a wanton killing or for the loss of a member of any house because of negligence. It would, for example, be nearly impossible to prove the exact value of a man's arm.

These remarks contain a great deal of truth. As a member of a tribunal of equity I believe that I am authorized to allow to the claimant a round sum, which I estimate according to my best endeavor and understanding at 10,000 bolivars, for the illegal stoppage of the commercial correspondence contrary to the treaty of the Universal Postal Union.

Because of what has been set forth, I ask the honorable umpire that he allow the claimant the following sums, together with the usual interest, that is to say, 21,724.76 bolivars, 1,200 bolivars, 10,112 bolivars, 14,211 bolivars, 5,182.23 bolivars, 16,103.88 bolivars, and 10,000 bolivars.

ZULOAGA, *Commissioner* (second opinion):

Articles 1 and 2 of Law XIV of the Code of Hacienda fixes what ports in Venezuela are opened for foreign commerce, exportation and importation, and those opened for exportation. In the western part of the Republic the port so qualified is Maracaibo. In article 10 of that law the National Executive is authorized to suppress and to remove these custom-houses already set up, which, by reason of contraband trade, or for any other causes prejudicial to the public treasury, may make it necessary in his opinion to adopt this measure.

Law XVIII regulates coastwise commerce—that is, interior maritime or coastwise commerce. This can not be carried on in conformity with article 1 of that law except in national vessels.

The interior commerce of the country along its navigable rivers is not, properly speaking, regulated; since these rivers are considered public highways, it is governed by the general laws of transportation (code of commerce).

The commerce which is carried on on Lake Maracaibo is coastwise commerce (art. 28, Law XXVIII), and therefore it can not be effected except in national vessels. The port of Encontrados is a coastwise port. (Art. 3, Law XIV.)

The rules concerning the register of vessels as national are those which appear in Law XXXIII. Foreigners (art. 24) may own national vessels, but the captain must be Venezuelan (art, 10), and for no reason can they make claims which could not be made by any Venezuelan owner and master of vessels. (Art. 24, above cited.)

The coastwise commerce of the Catatumbo is carried on in the manner and form which the Government of Venezuela considers proper, since it has its own interior commerce. There is this circumstance, that communication by the river Zulia as far as Colombia does not appear by the laws of Venezuela to be the most approved, but that of San Antonio does. The National Government, because of reasons of public order, can naturally regulate all the interior commerce, and respecting all other matters relating to the frontier the National Executive has the power which No. 14 of law 89 of the constitution gives him "to preserve the nation from every foreign attack."

The decrees which the Government has issued closing to the commerce of Colombia the way along the upper part of the Zulia are not only the exercise of its own right, but also, as has been shown many times to this Commission, a duty imposed by the circumstances. Venezuela had been fearing an invasion from Colombia, and the way of the Zulia is particularly dangerous in case of an invasion. If river commerce were permitted, the steam launches and lighters which carry on this commerce could go over to Colombia, and at a given moment might serve very efficiently for invasion, taking possession in the first place of the railroad of Táchira in Encontrados, and later threatening the lake. The Government, according to the circumstances and the gravity of the situation, has forbidden all traffic, or has only permitted it to be carried on in lighters or has permitted launches to ascend. It has tried to reconcile the interest which commerce might have with the public safety. Besides the protest of the Government after the revolution of Rángel Garbiras, I find in the record of one of the claims a letter of Gen. Celistino Castro, chief of the volunteers, to one of the claimants, which I present with this argument, showing clearly the situation with respect to Colombia during the past months.

It is inexplicable that the measures adopted by the Government in these circumstances could give rise to the least objection, and for my part it seems still more inexplicable that the claimants should strive to prove that Venezuela was closed to commerce in transit with Colombia (which was certainly her right) when precisely the contrary appears; that is, that the Government had attempted to facilitate the passage of commerce, and that it had always done so in one way or another. The key to all this has been made plain to me at last by the study of two claims—that of the German warehouses and that of the navigation company of the lake and Catatumbo River. The claimants, because the Zulia was closed to traffic, are interested in these enterprises, and the foundation in reality has no other cause than the direct interest of these companies in the navigation of the Zulia.

In the claim of Faber, who is not domiciled in Venezuela, I have already stated the considerations which I believed pertinent. In the claim of Beckman & Co., of Maracaibo, I should further call attention to the fact that this is an individual domiciled in Venezuela, and therefore subject to its police laws and decrees of public safety.

I do not accept that distinction or difference which the Commissioner of Germany wishes to establish with respect to the *German* commerce of Cúcuta and the *German* commerce of Maracaibo, from which it would not appear that both places were German colonies. The commerce of Cúcuta is *Colombian* commerce, no matter what the nationality of some of the merchants there may be, just as the commerce of Maracaibo is *Venezuelan*. There are no colonies in this country. The injustice of the claims of Faber and Beckman submitted to the umpire is flagrant, and a further explanation is unnecessary.

Germany considered it proper in diplomatic notes to protest against the closure of traffic by the Zulia, and Venezuela answered, setting up her entire right to govern her own territory as she might consider proper. Venezuela does not need to concern herself in this Commission with a protest of powerful Germany. The greater the power of the nation may be the greater should be its justice, which is the very essence of modern civilization, and it is just this impartiality and justice which constitutes the honor of the international tribunal and elevates the mission of the umpire. Nevertheless, I must doubt that the Government of the Empire had an exact knowledge of the facts, since if they had been revealed to it in such a definite manner as they appear before this Commission, it is not to be believed that it would have assumed the attitude which it adopted.

I do not believe that I ought to concern myself in any way with the proofs presented by the claimants. If I did so briefly in my first opinion I did so only with the object of showing how strange it is that a claim should be sustained which has no foundation in law or fact. The right of Venezuela to reject these claims is too clear for me to occupy myself in discussing their amount.

There remains for me one last consideration. In his first opinion the German Commissioner insisted that these claims ought to be considered as admitted by Venezuela by virtue of article I of the protocol. This is to return to the question already decided by the umpire contrary to the opinion sustained by the German Commissioner.

The umpire agrees in opinion with the Venezuelan Commission that the fair construction of Article I, in which the Venezuelan Government "recognizes in principle the justice of claims of German subjects 'presented' by the Imperial German Gov-

ernment," is to restrict it to claims which had been presented at the time of the execution of the protocol. This is its literal wording, and Article II restricts the claims to "those originating from the Venezuelan civil wars of 1898 to 1900" and provides for their payment modo et forma. [a]

There are 22 records of claims for injuries already paid. Those of Faber and Beckman were not among them, and they could not have appeared before this Commission. It appears useless to continue to argue further upon a point already decided.

Faber makes, moreover, a claim for supposed damages because of the interruption of his correspondence. If Venezuela had prevented this postal correspondence with Colombia (which does not appear), it is her right (Bluntschli, Droit International Codifié, art. 500), and she need not render account to individuals, and if any sack of mail of other countries might have been lost in this territory it is a subject to be treated of by the respective postal offices. It is not the business of individuals, and I understand that there is in the treaty of the Postal Union no clause to make an office liable in case of loss. There are many causes which might occasion it.

DUFFIELD, *Umpire:*

This is one of several claims which grow out of the suspension of river traffic on the river Zulia by Executive decrees of Venezuela in 1900, 1901, and 1902. The claimant Faber is a German subject who resides and has his place of business in Cúcuta, in Colombia.

The Commissioners radically disagree as to the liability of Venezuela. The Commissioner for Venezuela first objects to the jurisdiction of the Commission or the power of the umpire to decide the question of Venezuela's right to control and, if in her judgment necessary, to suspend the navigation of the rivers in question. After explaining the discussion of this question between the two Republics, as shown by the published official diplomatic correspondence, and pointing out that the matter is additionally complicated by disputed questions of boundary in the territory tributary to these rivers, he says:

In this condition of affairs Germany intervened and pretends to assume for herself the cause of Colombia and force Venezuela to open the Zulia route under the pretext that there are some German merchants in Cúcuta who are injured by the Venezuelan decrees. It is impossible to imagine intervention by a third party more unreasonable and unlawful.

The question is between Venezuela and Colombia, and if decided can only be decided by those two countries alone and exclusively, and I must emphatically deny the allegation of the Commissioner for Germany, and affirm that it is entirely contrary to the tenor and spirit of the Washington protocol and the powers vested by it in this Commission; that, according to this treaty Germany is not authorized to put in dispute any matter which may compromise the sovereignty of Venezuela, nor put in dispute her present legal status which gives her exclusive sovereignty over her rivers and lakes. To sustain a claim for injuries to Cúcuta merchants with the reasons adduced, to the effect that the river Zulia must be opened to international commerce, is to surreptitiously introduce questions as to the sovereignty of Venezuela into a tribunal which is called upon to take cognizance only of matters of fact, in conformity with absolute equity, which precisely supposes the exclusion of those questions which exact another kind of study and another standard of judgment.

If there should possibly be a controversy between Venezuela and Colombia in regard to the matter, the consequence of this surreptitious intervention of Germany would lead to a legal precedent being found in the question which is submitted to the umpire—a precedent which would be a very singular one in the relations between the two Republics, whichever way it might be decided.

---

[a] Page 553.

He also, without waiving in the least, but reiterating his objection and protest to the jurisdiction of the Commission over the claim, contends that the decree is a lawful exercise by Venezuela of sovereignty over that which is in her own territory and under her absolute dominion. He claims that under the recognized principles of international law governing such cases Venezuela has a general right to regulate and control the use of those portions of any rivers which are in her territory, even though they may come from or flow into the domain of another nation.

In addition, he contends that the laws of Venezuela confine river navigation to Venezuelan boats, and that such legislation is a lawful exercise of sovereignty by Venezuela; that neither the Zulia nor the Catatumbo has ever been navigated by German boats; that the draft of water in the Zulia River is only 2 feet, and in summer much less, until it flows into the Catatumbo, which has a normal depth of 5 feet about 100 kilometers above Lake Maracaibo; that Lake Maracaibo "is absolutely Venezuelan, and it has occurred to no nation to doubt it."

He also insists that the proofs are insufficient, because they consist of the testimony of two witnesses, of Cúcuta, who say that they have seen the books of Faber's house; "that the data on which the claim is supported agree with those books, and that the appraisals made, in their opinion, correspond with the truth;" that under article 1293 of the código civil the—

> books of merchants are evidence against them, and not in their favor, [and] that this is a general principle of law also, that a consul is not a proper authority in Colombia to legalize documents, which can be done only by the local authorities, and that no official can certify conclusions of law, and that the claim is absolutely without proof.

Taking up these objections in their inverse order, the objection to the inadmissibility of the consular certificate because of want of authority in that office to certify documents or copies thereof, is not well taken. It was decided by the Mixed Commission under the treaty of Ghent that a certificate of a British consul, or any British functionary, should be received in evidence.

It is true this was done in the formulating of rules of procedure and in specifying what the Commission would receive as evidence. It is well known to be the settled practice of consuls to certify copies of documents and private agreements.

The other objection to the admissibility and effect of the certificate, that it certifies to conclusions of law only, and not to facts, and that the only proof of the claimant consists in the testimony of two witnesses who say that they have seen the books of Faber's house, and testify to their conclusions therefrom, raises a more difficult question.

The language of the protocol commands the Commission—

> to receive and carefully examine all evidence presented to them by the Imperial German minister at Caracas and the Government of Venezuela. [And] In particular they shall be authorized to receive the declaration of claimants or their respective agents and to collect the necessary evidence.

If the word "evidence" as used in the protocol is to be interpreted in its usually accepted legal sense in law, namely, such testimony as is admissible under the rules of either the civil or common law, the objection of the Commissioner is well taken. It has been held, however, by a former justice of the Supreme Court of the United States, in the case of Pelletier (Moore, p. 1752), that the technical rules of the

common law in respect to evidence were not adapted to the proceedings before a mixed commission, and that "he would feel disposed to act upon whatever evidence satisfied his mind as to the actual facts."

Judge J. C. Bancroft Davis said, in Caldera cases (15 C. Cls. R., 546):[a]

> In the means by which justice is to be attained the court is freed from the technical rules of evidence imposed by the common law, and is permitted to ascertain truth by any method which produces *moral conviction*.
>
> This proposition is self-evident. * * *
>
> In its wider and universal sense it [evidence] embraces all means by which any alleged fact, the truth of which is submitted to examination, may be established or disproved. (1 Green. Ev., sec. 1.)
>
> International tribunals are not bound by local restraints; they always exercise great latitude in such matters (Meade's case, 2 C. Cls. R., 271), and give to affidavits, and sometimes even to unverified statements, the force of depositions.

In deference to these decisions, and because of the character of the conclusions of fact which the consul and the witnesses erroneously substitute for copies of the papers, and because of the provision in the protocol requiring the Commissioners to disregard objections of a technical nature, and, further, because there is no doubt in the mind of the umpire as to the truth or correctness of these conclusions, which do not involve any question of law, the umpire will accept the same as proof.

Coming now to the main objection of the Commissioner for Venezuela, first, the umpire is unable to sustain the claim that—

> the question is between Venezuela and Colombia, and if decided can only be decided by those countries alone and exclusively, and that according to the protocol Germany is not authorized to put in dispute any matter which may compromise the sovereignty of Venezuela.

While it would be regrettable that any decision of the Commission might have a direct bearing upon an international dispute between Colombia and Venezuela, certainly if a case arose in which a German subject had been deprived of property or rights of property by an act of Venezuela the jurisdiction of this Commission over his claim would be as complete as its jurisdiction over any other claim. This Commission does not decide the dispute between Venezuela and Colombia. Incidental to its decision on the merits of the claim it may have to express its opinion on the question between them. While it is true that such opinion would probably be quoted by the State in whose favor it would happen to be, it would have no authoritative force, and be only entitled to such consideration as the logic of its reasoning might give.

As to the main objection of the Commissioner for Venezuela that her acts in closing the ports in question were fully within the attributes of her sovereignty, the Commissioner for Germany insists to the contrary. In the course of a very able discussion of the question, to which he has brought great research, he maintains:[b]

> To begin, it can not be denied that a sovereign state possesses absolute authority over its rivers and water courses as far as the boundary lines of other states. This principle is nevertheless limited in two ways in international law. When a river is the only route of communication and indispensable to the existence of another state or part of it, its use can not be entirely prohibited. (Citing Heffter, Int. Law of Europe, Berlin, 1857, p. 147.)

He also cites Heffter, Puffendorf, Groot, and Vattel, that a state can not deny to another nation without committing an act of hostility,

---

[a] Dissenting opinion, page 606.

[b] See p. 605.

and no state can prevent another from getting its commerce to the market of a third without giving offense and inflicting injury, and he claims that "these international maxims whose object is to draw nations together have been at different times embraced in treaties," a number of which he cites, and concludes:

> It must be considered as an international doctrine that the navigation of rivers passing through the territory of several states, together with all their affluents, must be free from the point where they begin to be navigable to the point where they empty into the sea.[a]

The respect due the Government of Germany, which presents the claim as a proper one in case the facts alleged in support of it are proven, and the rights of the claimant in the large amount involved, together with those of others in like situation (2,401,685 marks), calls for the most careful consideration by the umpire of the respective opinions of the Commissioners, each of whom has filed responding opinions, and necessitates a discussion of their different contentions.

The general subject of the free use of rivers running to the sea has been very much discussed by writers on international law from the earliest times.

The territory of the Republic of Colombia encompasses the Republic of Venezuela on the north, west, and south. Its boundary begins at Point Peret, on the western shore of the Gulf of Maracaibo, thence running in a southerly direction along the Sierra of Periga to a little south of San José de Cúcuta, where it turns and continues in an easterly direction to the Orinoco; thence up the Orinoco, which for this distance forms the boundary between the two Republics; and thence in a generally southern direction to the northern boundary of Brazil.

The principal commercial waterways, domestic and oceanic, of Colombia are the Magdalena and its main affluent, the Cauca, which flow almost the entire length of Colombia northward to the sea, and the rivers Meta and Guaviare, rising in the oriental Cordilleras and flowing eastward until they reach the Orinoco, on the boundary line between Venezuela and Colombia, and thence by that stream through the territory of Venezuela to the sea. In addition, Colombia possesses a great extent of coast line, on both the Atlantic and Pacific oceans.

Venezuela is not so well equipped by nature for ocean commerce. Its main arteries east of the Andes Mountains and north of the numerous sierras on the boundary of Brazil are the Orinoco river and its affluent, the Apure. In the western portion of the Republic the only avenue of oceanic commerce is through the Gulf of Maracaibo, the western shore of which as far into the gulf as Calabozo Bay is Colombian territory, thence through Lake Maracaibo and the Catatumbo River, which is only navigable for vessels of 5 feet draft of water, to about 6 miles above Encontrados, at or near which point the Zulia River flows into the Catatumbo. The Zulia has normal depth of water of 2 feet, and is navigable for small steam vessels and lighters and canoes as far up as Port Villamizar.

The Catatumbo River rises in Colombia a short distance from the Venezuelan boundary. Thereafter it continues in the territory of the latter exclusively until it discharges into Lake Maracaibo. The Gulf of Maracaibo is from 250 to 300 miles east of the mouth of the Magdalena River. The western shore of the Gulf of Maracaibo, from

---

[a] Page 606.

Point Gallinas to Calabozo Bay, is Colombian territory. The point at which Lake Maracaibo empties into the Gulf of Maracaibo is, however, entirely within Venezuelan territory. The depth of water at this point is 10½ feet. The bar at the point where the Catatumbo River enters Lake Maracaibo has a normal depth of but 5 feet. The Catatumbo River from Lake Maracaibo to Lake Encontrados has a normal depth of not to exceed 5 feet. It is not accurate, therefore, to say that the Zulia River is indispensable to the existence of Santander, or that it is the only route of communication of Santander through the Republic of Colombia to the sea. The Magdalena River, which furnishes a route to the sea for most of the fertile part of Colombia, is navigable to Honda, a point more than a hundred miles south (inland) of the latitude of the port of Villamizar, and is navigable from Honda to the ocean for larger-draft vessels.

Normal physical conditions require freight from San José de Cúcuta and the Caribbean Sea to be carried as follows: From Cúcuta to Puerto Villamizar, on the Zulia River, by Colombia Railroad, the termini of which are Puerto Villamizar and a point in Colombia on the Táchira River, opposite San Antonio. At Puerto Villamizar it must be reshipped onto small stern-wheel steamers of not more than 2 feet draft of water; or lighters, with a capacity of 400 quintals, called *bongos*, which are propelled by poling; or canoes, and carried to Encontrados. Here it is reshipped onto lake-going vessels, which carry it to Maracaibo, where it is again reshipped onto seagoing vessels.

There are two railroads which can be made use of in the carriage of freight for the territory tributary to the Zulia and Catatumbo rivers—the Táchira Railroad, which is entirely within Venezuela, with its termini at Encontrados and Uraca and La Fria; the Cúcuta Railroad, above mentioned, which is entirely in Colombia, with its termini at Cúcuta and Puerto Villamizar; also, a highway called the Urena road, leading from Colombia into Venezuela and crossing the boundary of the two Republics near Urena, in Venezuela.

The effect of the several decrees of Venezuela, translations of which are appended, was as follows:

The decree of September 11, 1900, suspended all river traffic above Encontrados, whether bound up or down; that of March 4, 1901, modified this suspension so as to permit "commerce to be carried on on the rivers Zulia and Catatumbo," but only by means of lighters and canoes, so long as new fears of public troubles do not exist to the contrary, "but did not permit the use of steam vessels;" that of July 29, 1901, "revoked the decree of the 4th of March, 1901, and revived the decree of September 11, 1900," suspending all river traffic above Encontrados. This condition of affairs continued until the decree of June 14, 1902, which "temporarily permitted transportation of merchandise over the Urena road between Cúcuta and Maracaibo, and vice versa, the Encontrados way being left open for river trade only."

The decree of January 15, 1903, however, by—

Article I, revoked the absolute prohibition of traffic between Encontrados and Puerto Villamizar prescribed by the decree of July 29, 1901;

Article II, revived the permission of traffic by means of lighters (bongos) and canoes, but limited it to the El Guayabo, whence it must be by rail;

Article III, permitted steam and sailing vessels to carry merchandise en route for Colombia only between Maracaibo and Encontrados.

Finally, the decree of April 3, 1903, by—

Article II, abrogated the provisions of Article II of the decree of January 15, 1903, in respect to the importation of merchandise en route for Colombia "until the objections to said importations are removed." This decree has not at any time been modified and is still in force. The present situation, therefore, only permits navigation of steam and sailing vessels en route for Colombia between Maracaibo and Encontrados (Art. III of decree of January 15, 1903) and the transportation of merchandise over the Urena road between Cúcuta and Maracaibo (decree of June 14, 1902).

There had been in the year 1899 much discussion between the two Republics as to their respective rights on the Orinoco River. It terminated without reaching any satisfactory understanding, and is still unadjusted. The situation of the Orinoco River, however, is materially different from the Catatumbo and Zulia. The former river rises in Brazil and forms the boundary line between Venezuela and Colombia, as above stated, and thence runs entirely in Venezuelan territory, to the sea. The two Republics, as to that portion of it which forms their boundaries, about 200 miles in length, are coriparian proprietors, a relation they do not at any point sustain as to either the Catatumbo or Zulia rivers.

The Catatumbo, so far as it is navigable, is entirely within the boundaries of Venezuela after the confluence of the Zulia with it.

On account of these and other differences in the situation and the physical conditions of the two rivers and those of the Orinoco, this decision is not intended to, and must not, be considered as even intimating any opinion in respect to the Orinoco River.

We are met on the threshold of the discussion with the fact that no direct oceanic navigation was interrupted. Physical limitations deprive Colombia of the enjoyment of direct oceanic traffic through Venezuelan territory. No seagoing vessels can thus pass into Colombian territory. All must stop at Maracaibo, where all ocean freight must be reshipped. The case, therefore, is not one in which a foreigner is deprived by the act of Venezuela of the use of waters to which nature has given him direct access. That right Venezuela has not attempted to restrict. She permits him to carry his goods in the vessel in which they entered her territory as far as nature permits him. But the claimant insists that because of the nature of his business he suffers damage because goods are not permitted to be twice reshipped in the territory of Venezuela and thus transported into Colombia. Obviously this is a very different matter. First, it of necessity involves the use of land of Venezuela not incidental to navigation merely, but for the transshipment, carriage, and handling of freight on her shores. Second, it extends the claim of free navigation of rivers to a new case, for which I have found no precedent.

It is one thing for a foreigner to claim, "I have a right to navigation for my vessels wherever natural conditions permit, and Venezuela can not restrict it." But it is quite another thing to claim, "I have a right to send my goods over the inland waters of Venezuela, reshipping them into smaller and smaller vessels as often as the lessening depth of water may require." The question seems to be one of regulating commerce, rather than restricting internal navigation. It also appears that the laws of Venezuela with reference to internal navigation over its rivers and lakes require a nationalization of the vessels

engaged therein. They also define interior maritime commerce of coast or river trade to be that which is established between ports and points on the banks of the rivers or shores of Venezuela in national boats with foreign merchandise which has paid duty, or fruits or other productions of the country. Another provision of law requires captains of vessels engaged in this trade to be Venezuelan citizens.

That these provisions were within the proper exercise of Venezuela's sovereignty can not be doubted. It results, therefore, that in the lawful exercise of such sovereignty she has excluded from her internal commerce boats of other nationalities and required even the boats of Venezuelan nationality to be commanded by Venezuelans.

For a considerable period before the decree of September 11, 1900, was issued there were internal political disturbances in the territory tributary to the Catatumbo and Zulia rivers. The relations between Venezuela and Colombia were at the same time seriously strained, and the former complained that revolutionist plans and movements found moral and material support on Colombian territory, which afforded a secure base of operations for them.

In this state of affairs the various decrees complained of were promulgated. It is evident that their purpose was to control the passage of vessels, especially steamers, to and fro between Colombia and Venezuela. The language of some of the decrees intimate fears of hostile forces entering Venezuela in that way. In July, 1901, Gen. Rángel Garbiras had begun his insurrection, which at one time seemed threatening, from Colombia. A part of his forces came into Venezuela by way of the Zulia and Catatumbo rivers. It may be reasonably presumed that this was the cause of the decree of July 29, 1901, revoking the permission given in that of March 4, 1901.

The concrete question, therefore, in the case is whether, under these physical and political conditions, Venezuela had the right to suspend the traffic on these rivers by the closing of these ports. She was in full possession of them and they were actually under her sovereignty. This distinguishes the case from that of the Orinoco Asphalt Company, just decided.[a]

As has been shown above, there is no substantial contradiction of authorities as to the rights of a state to regulate, and, if necessary to the peace, safety, and convenience of her own citizens, to prohibit temporarily navigation on rivers which flow to the sea. What is necessary to peace, safety, and convenience of her own citizens she must judge, and it seems to the umpire quite clear that in any case calling for an exercise of that judgment her decision is final. That a case for the exercise of this discretion did exist at the dates of the various decrees complained of is obvious, and in the opinion of the umpire the decision of Venezuela in the premises can not be reviewed by this Commission or any other tribunal. Being of the opinion that the closing of the ports of the Catatumbo and Zulia rivers under the circumstances which existed at the time was a lawful exercise of sovereignty by the Republic of Venezuela, the claim is disallowed.

A complete examination of the question leads back to the differing theories of the true source of natural law. It would extend this opinion to too great a length to discuss them, but a brief statement of them is pertinent.

---

[a] See p. 586.

Some philosophers, while admitting that human ideas of right spring solely from revelation, do not agree that natural law is but the consequence of revelation of divine or moral law. (Statel. Rechts philosophie, V. 1.)

Others derive their idea of natural law from the most abstract theories of reason, without taking into account the continual changes of social relations, which, being the practical basis of that law, necessarily exert an influence on the idea itself. (Grotius-Kant.)

While others, still, putting aside both the abstract and objective idea of a Supreme Being, discuss the source of natural law in the supreme and absolute faculty of the abstraction they call *esprit du monde.* (Hegel.) They construct the moral and material world by the dialectic process of an abstract idea, and define the state as the realization of God in the world. The consequence is the complete absorption of the citizen in the state and the individual in the "pantheistic chaos of universal reason," which, on the other hand, has no conscience of its own. Still another school recognizes natural law as the science which exhibits the first principles of right founded in the nature of man and conceived by reason. (Ahrens.)

But when the crucial question comes, from what authority natural law is derived, each publicist seeks to solve it in his own way.

The theory of Grotius was that on the establishment of separate property, which he conceived grew by agreement out of an original community of goods, there were reserved for the public benefit certain of the preexisting natural rights, and that one of these was the passage over territory, whether by land or by water, and whether in the form of navigation of rivers for commercial purposes, or of an army over neutral ground, which he held to be an innocent use, the concession of which it was not competent to a nation to refuse.

It is on this doctrine that some writers on international law uphold the principle of the freedom of river navigation.

Gronovius and Barbeyrac, in their notes to Grotius, consider the right of levying dues for permission to navigate rivers. This would seem to imply the right to prohibit navigation. It has been decided by the Supreme Court of the United States in the lottery cases that the right to regulate commerce includes the right to prohibit.

Bluntschli (par. 314) broadly states that water courses which flow into the sea, and navigable rivers which are in communication with an independent sea, are open to the commerce of all nations, but he restricts the right to the time of peace.

Calvo holds that where a river traverses more than one territory the right of navigation and of commerce on it is common to all who *inhabit its banks*, but when it is wholly within the territory of a single state it is considered as within the exclusive sovereignty of that state. He limits the exercise of that sovereignty to fiscal regulations, but seems to subordinate the right of property to that of navigation.

Fiore (758–768) agrees in the main with Calvo, that in the case of a river flowing through one state only, that state may close the river if it chooses.

It is difficult to sustain the distinction of a navigable river running into the sea.

Heffter, paragraph 77, says that each of the proprietors of a river flowing through several states, the same as the sole proprietor of a river, can, stricti jure, regulate the proper use of the waters,

and restrict it to the inhabitants of the country and exclude others. But, on the other hand, he agrees with Grotius, Puffendorf, and Vattel, at least in principle, that the privilege of innocent use should not be refused absolutely to any nation and its subjects in the interest of universal commerce.

Wheaton (Elements of International Law, pt. 2, ch. 4, par. 11, Lawrence's ed.) declares that the right of navigation, for commercial purposes, of a river which flows through the territories of different states, is common to all the nations inhabiting *the different parts of its banks*. But this right of innocent passage being what the text writers call an *imperfect right*, its exercise is necessarily modified by the *safety and convenience* of the state affected by it, and can only be effectively secured by mutual convention regulating the mode of its exercise, citing Grotius, Vattel, and Puffendorf.

Halleck says (vol. 1, p. 147, chap. 6, sec. 23) that the right of navigation for commercial purposes is common to *all the nations inhabiting the banks of* a navigable river, subject to such provisions as are necessary to secure the *safety and convenience* of the several states affected.

De Martens, Précis, paragraph 84, recognizes, as a general rule, that the exclusive right of each nation to its territory authorizes a country to close its entry to strangers, but that it is wrong to refuse them innocent passage. It is for the state to judge what passage is innocent. But he seems to think that the geographical position of another state may give it a right *to* demand, and in case of need to *force*, *a passage* for its commerce.

Woolsey, paragraph 62, says:

> When a river rises within the bounds of one state and empties into the sea in another, international law allows to the inhabitants of the upper waters only a moral claim or imperfect right to its navigation.

Phillimore, in speaking of the refusal of England to open the St. Lawrence unconditionally to the United States, says (pt. 1, Par. CLXX):

> It seems difficult to deny that Great Britain may have grounded her refusal on strict law; but it is at least equally difficult to deny that by so doing she put in force an extreme and hard law,

not consistent with her conduct with respect to the Mississippi.

Klüber, paragraph 76, considers that the independence of the states is to be particularly noted in the free and exclusive usage of the right over water courses—at least in the territory of the state in which the water course flows into the sea, navigable rivers, channels, and lakes are situate. * * *

And that—

> a state can not be accused of injustice *if it forbids all passage of foreign vessels on its water courses*,

flowing to the sea, rivers, channels, or lakes in its territory.

Twiss, Volume I, section 145, page 233, second edition, declares that—

> a nation having physical possession of both banks of a river is held to be in juridical possession of the stream of water contained within its banks, and may rightfully exclude at its pleasure every other nation from the use of the stream whilst it is passing through its territory.

It is to be observed that distinctions are drawn by some of the above text writers, some declaring that the right of innocent use is confined to time of peace; others that only the inhabitants of those countries through which the river passes have the right of innocent use, while still others sustain the right without any limitation, save the right of the state to make necessary and proper regulations in respect to the use of the stream within its boundaries.

The theory of Grotius, mentioned above, has been said to be the "root of such legal authority as is now possessed by the principle of the freedom of river navigation." (Hall's Treatise on International Law, p. 137.) It does not appear to have been adopted by the best annotators on international law. Hall says: "It can no longer be accepted as an argumentative starting point." (Hall's Treatise on International Law, p. 139.)

Phillimore speaks of it as a "fiction which this great man believed," and says:

> But as the basis of this opinion clearly was, and is now universally acknowledged to be a fiction, this reason, built upon the supposition of its being a truth, can be of no avail. (Phillimore's Com. on International Law, p. 190, Sec. CLVII.)

The other theory, also of Grotius, was because the use of rivers belonged to the class of things "*utilitatis innoxiæ*," the value of streams being in no way whatever diminished to the proprietors by this innocent use of them by others, inasmuch as the use of them is inexhaustible. (Vattel, Bk. I, chap. 23.)

This right of mere passage by one nation over the domain of another, whether it be an arm of the sea, or lake or river, or even the land, is considered by him as one of strict law, and not of comity. It is said on the other hand that it is not founded on any sound or satisfactory reason, and is at variance with that of almost all other jurists. (Phillimore, *ubi sup.*)

> The same view was taken by Grotius, but the great weight of authority since Vattel is that the state through which a river flows is to be the sole judge of the right of foreigners to the use of such river. (Wheaton's International Law, Vol. I, p. 229, cited from Wharton, Vol. I, sec. 30, p. 97.)

Still another ground is asserted as a basis for this free use of rivers, viz, that conceding the proprietary rights of the state over that portion of the river within its boundaries, nevertheless these should be subordinated to the general interests of mankind, as the proprietary rights of individuals in organized communities are governed by the requirements of the general good. It is pertinently remarked by an eminent jurist that this—

> involved the broad assertion that the opening of all waterways to the general commerce of nations is an end which the human race has declared to be as important to it as those ends to which the rights of the individual are sacrificed by civil communities, are to the latter. (Hall, p. 139.)

Most of the advocates of the innocent use of rivers base their claim upon the grounds that the inhabitants of lands traversed by another portion of the stream have a special right of use of the other portions because such use is highly advantageous to them. If the proprietary right of the state to the portion of the river within its boundaries be conceded, as it must be generally, there can be no logical defense of this position. It certainly is a novel proposition that because one may be so situated that the use of the property of another will be of special advantage to him he may on that ground demand such use *as a right.*

The rights of an individual are not created or determined by his wants or even his necessities. The starving man who takes the bread of another without right is none the less a thief, legally, although the immorality of the act is so slight as to justify it. Wants or necessities of individuals can not create legal lights for them, or infringe the existing rights of others. (Hall, p. 149.)

It seems difficult upon principle to support the right to the free use of rivers as a right stricti juris. While this is not expressly admitted, it is tacitly conceded by nearly all the advocates. They define this right of use as an "imperfect right." The term is an anomaly. The fallacy is thus aptly stated by a learned authority on international law:

> A right, it is alleged, exists; but it is an imperfect one, and therefore its enjoyment may always be subjected to such conditions as are required in the judgment of the state whose property is affected, and for sufficient cause it may be denied altogether. (Hall, p. 140.)

Woolsey terms it "only a moral or imperfect right to navigation."

However, it is no longer to be doubted that the reason of the thing and the opinion of other jurists, spoken generally, seem to agree in holding that the *right* can only be what is called (however improperly) by Vattel and other writers imperfect, and that the state through whose domain the passage is to be made "*must be the sole judge* as to whether it is innocent or injurious in its character." (Phillimore, CLVII, citing Puffendorf, Wheaton's Elements of International Law, Hesty's Law of Nations, Wolff's Institutes, Vattel.)

From this review of the authorities it seems that even in respect of rivers capable of navigation by sea-going vessels carrying oceanic commerce the weight of authority sustains the right of Venezuela to make the decrees complained of. But in the opinion of the umpire there are other considerations which control the decision in this case.

If the case before the umpire turned upon this general question of international law, the umpire is inclined to the opinion that he would be compelled to sustain the right of Venezuela to the complete control of navigation of the Catatumbo and Zulia rivers. In his opinion it is not necessary to decide the case on this ground. As has been shown above, there is no contradiction of authority as to the right of Venezuela to regulate, and, if necessary to the peace, safety, or convenience of her own citizens, to prohibit altogether navigation on these rivers. It is also equally without doubt that her judgment in the premises can not be reviewed by this Commission or any other tribunal. That a case for the exercise of discretion did exist is obvious.

The other claimants who ask damages for the closing of these ports are all residents of and doing business in Maracaibo, in Venezuela. There was suggestion in the discussion of the case that there might be different rule as between a Venezuelan resident and a resident of Colombia, but in the opinion of the umpire, given a common German nationality, there is no such difference.

PLANTAGEN GESELLSCHAFT CASE.

Evidential value of letters and unauthenticated receipts.[a] Valentiner case affirmed.[b]

DUFFIELD, *Umpire*:

This claim is for 387,143.39 marks, and is founded on the alleged injuries to the haciendas of the claimants during the last civil wars. It appears that these haciendas were in the neighborhood of active military operations and the scene of considerable fighting. Part I of the claim in the amount of 369,968 marks and Part II in the amount of 7,354 marks are almost entirely made up of claims for consequential damages—loss of crops already planted, prevention of planting of other crops, inability to protect the growing crops from birds which destroyed them because of the impossibility of working and the frequent drafting of the laborers.

The Commissioners disagree as to the liability of Venezuela for these damages, and the case is governed by the decision of the umpire in the case of Hugo Valentiner, No. 12 (see p. 562).

The Commissioner for Germany, however, is of the opinion that there are certain "direct injuries proven, and although their value is not fixed, he leaves it to the umpire for reasons of equity to grant to the claimant an indemnification amounting in round figures to 20,000 bolivars." In the opinion of the umpire there is proof of very considerable injuries to the property of the claimant, for which the umpire would certainly have allowed him damages if he adduced any proof as to the amount of values. In the absence, however, of such proof, notwithstanding the hardship of the case, the umpire sees no legal or legitimate way of arriving at the sum of 20,000 bolivars. There is the testimony, however, of two witnesses, Oropeza and another, as to the destruction of 231,230 4-year-old coffee plants, a fair valuation of which, in the opinion of the umpire, is 20,000 bolivars, and this sum will be allowed the claimant.

Of Part III of the claim, 9,820.45 marks, the Commissioner for Venezuela allows 1,472 marks for property taken from a driver of the claimant company on the January 4, 1903, but denies the liability of Venezuela for the remainder of the part. His reasons therefor are as follows:

That the item of 5,504 marks is only proven by the letter or statement of the manager of the hacienda, and that the prices which the claimant places on the animals which he says were lost are in general double their value. The Commissioner for Germany insists that the proof is sufficient, and fixes the value of the property taken upon the basis allowed by the Commission in the claim of Steinworth & Co., No. 55, and other claims, at 3,744 marks.

While the proofs as to these items are very meager, the umpire concurs in the opinion of the Commissioner for Germany and awards the claimant on account thereof 3,744 marks.

That the items for injuries from February 7, 1902, to January 31, 1903, 2,563.90 marks, are not proven, because the receipts purporting to be therefor are not authenticated. He also criticises them because they are stamped with the seal of the Jefatura Civil of Carayaca. In view of the fact that the evidence fully establishes the occupation of

---

[a] See page 600, and note. [b] Page 562.

the hacienda by both Government forces and revolutionists, and the taking of property therefrom, the umpire is unable to agree with the Commissioner for Venezuela and disregard these receipts as evidence, and the claim will be allowed for the sums named in the receipts, which is the amount claimed.

The entire claim, therefore, is allowed at the sum of 30,098 bolivars, which includes interest up to December 31, 1903.

THE GREAT VENEZUELAN RAILROAD CASE.

An agreement between the Government and the railroad company to the effect that if the railroad will carry troops and munitions of war the Government will see that the railroad is indemnified for all damages resulting therefrom is absolutely void, as it is against public policy, and because the railroad company as a quasi public corporation is bound to carry all persons and freight, not in themselves obnoxious, which may be presented to it.

Kummerow case [a] affirmed.

Only legal rate of interest as provided by Venezuelan laws will be allowed on claims.

Government of Venezuela not liable for damages caused by guerrillas.

No damages allowed for suspension of traffic over railroad during period of active operations in the field through which the railroad passed because this was justified as a military necessity.

DUFFIELD, *Umpire:*

This claim is for the aggregate sum of 931,186.50 bolivars. It is made up of four claims, each of which is again divided into items, and some of those items into parts, as hereinafter particularly stated:

	Bolivars.	Bolivars.
Claim I is for		190,250.86
Embraced in—		
Item 1 for	142,615.00	
Item 2 for	47,635.86	
Claim II is for		40,594.77
Embraced in—		
Item 1 for	37,181.50	
Item 2 for	3,413.27	
Claim III is for		225,991.63
Embraced in—		
Item 1 for	213,199.65	
Item 2 for	12,791.98	
Claim IV is for		790,346.60
Embraced in—		
Item 1 for	789,500.53	
Item 2 for	846.07	
Aggregating		931,186.50

CLAIM I.

Item 1 of this claim, 142,615 bolivars, is divided into two parts. The first part is for 6,215 bolivars, for damages for injuries caused by the derailment near Cagua of a special night train from Maracay to Cagua, on December 19, 1901. The second part is for 136,400 bolivars, for damages for the suspension of all traffic on the railroad from December 23, 1901, to January 9, 1902, by an order of the department of public works (ministerio de obras publicas) of December 23, 1901, published in the Official Gazette of the 26th of December, 1901, No. 2481.

---

[a] Page 526.

Item 2, 47,635.86 bolivars, is for interest to July, 1903, at 12 per cent per annum on item 1.

CLAIM II.

Item 1, 37,181.50 bolivars, is composed of parts "*a*" and "*b*." Part "*a*," 10,181.50 bolivars, is for damages and injuries owing to the transportation by the railroad of troops and munitions of war. Part "*b*," 27,000 bolivars, is for damages and injuries to the steam tramway from Guigue and to the steamer *Lake Valencia* between December 30, 1901, and October 1, 1902.

Item 2, 3,413.27 bolivars, is for interest at 12 per cent per annum to July, 1903, on item 1.

CLAIM III.

Item 1, 213,199.65 bolivars, is composed of parts "*a*" and "*b*." Part "*a*" is for 169,767.40 bolivars for damages and injuries to the railroad owing to transportation of troops and munitions of war and for the enforced suspension and interruption of traffic from October 1 to December 1, 1902. Part "*b*" is for 43,432.25 bolivars for damages and injuries to the road owing to transportation of troops and for the enforced suspension and interruption of traffic to the end of 1902.

Item 2, 12,791.98 bolivars, is for interest at 12 per cent per annum to July, 1903, on item 1.

CLAIM IV.

Item 1, 789,500.53 bolivars, is made up of two parts. The first part, 537,632.90 bolivars, is for fares and freight in 1899 and the balance due on the order of the board of public works (ministerio de obras publicas), dated July 12, 1900, on the Bank of Venezuela. In the statement of the claim there is no division of this part showing how much of it is fares and freights and how much balance due on the order. The second part, 251,867.63 bolivars, is interest on the above part.

Item 2, 12,791.98 bolivars, is composed of two parts. The first part, 557.45 bolivars, is for fares of the government of the Federal district, charged to the National Government under the authority of its note of October 7, 1901. The second part, 288.62 bolivars, is for interest on the said first part.

The Commissioners agree upon the allowance of claim IV at the sum of 575,056 bolivars, which includes interest to the 31st of December, 1903. (Vide acts of the sixteenth session, July 27.) Upon all of the other items they disagree.

The first opinion of the Commissioner for Venezuela was completed before that of the Commissioner for Germany, and is referred to therein. It is not disputed that the official of the railroad company in charge at Maracay refused the request of General Bello, commandant at arms at that place, for a train to Cagua on the night of the 19th of December, 1901, at 9.30, and General Bello was only able to obtain it by force a little after 2 o'clock on the morning of the 20th. Even then—

neither the engineer nor the company rendered any assistance to the chief of the Government, who was starting out for no less a purpose than to destroy the revolution at its root and to capture its principal military chief.

Prior to this the company, on the 16th of the same month, through its managing director, sent to the minister of public works a letter in which he stated that he had received an anonymous letter—published in full in the Official Gazette of the 26th of December, 1901, No. 8421—containing, among other things, the following:

> The transportation over the railroad belonging to your company may bring many injuries upon your line and may be the cause of many misfortunes.
>
> THE PARTIES INTERESTED.

In the correspondence between the railroad and the Government at this time, which is found in the Official Gazette of the 26th and 28th of December, 1901, and January 13, 1902, the managing director of the railroad company writes that he has received an anonymous letter threatening his company with injuries in case it transported any troops or material of war for the Government, and requests the minister of public works to forward the note to the President of the Republic in order that he might order the stoppage of transportation of war material and troops over the line, or, if that was impossible, to satisfactorily guarantee the company reparation for all the injuries and losses that might come to it because of such transportation. To this note the minister of public works replied, criticising the managing director for taking so much notice of an anonymous letter and that the time of conflict, which in his imagination had begun, or which he knew from his knowledge of affairs was about to begin, should seem to him a propitious time to collect from the Government sums which former administrations owed, administrations the company had not refused to serve with transportation without guaranties, and of which the present Government had paid up to August, 1901, nearly 400,000 bolivars and had always paid the railroad its own obligations.

On the 22d of December, 1901, the managing director of the railroad declined to fill an order for the transportation of a detachment of troops. In connection with this refusal the managing director sent to the minister of public works a letter, from one Rodriguez, calling himself "chief of greater state, of division 'Caracas,'" in which he threatened damage to the railroad if they carried troops or munitions of war for the Government.

On the 23d of December the prefect of police, and subsequently the governor of the district at Caracas, stopped a train and ordered the suspension of all trains. To the complaint of the managing director for this action the minister of public works replied, stating there was no revolution at the time of the director's first letter, and commenting upon the director's knowledge of what afterwards happened, and saying that the Government finds it necessary to order that if it can not get service from the railroad the railroad shall not give it to others, and that on account of his conduct the Government considered the managing director hostile to the interests of public peace.

After considerable acrimonious correspondence, and a request by the Government to the Berlin directors of the railroad to substitute another managing director, because the Government considered the present one to have taken a hostile attitude, even before the revolution, to which the Berlin directors did not accede, saying they did not believe the managing director was a revolutionist, and asking proof of his illegal conduct, the parties entered into an agreement on the 9th day of January, 1902. The agreement was executed by the

minister of public works on the part of the Government and the managing director on the part of the railroad. In it the company "acknowledges the obligation of transporting troops and material of war for the Government," and the Government obliges itself in cases of war to indemnify the railroad for the losses which it may suffer because of such transportation, including pensions to Venezuelans, according to Venezuelan law, and to foreigners in a gross sum equal to nine years' salary, and agrees to order the opening of traffic on the railroad.

The conclusion which the Commissioner for Venezuela wishes should be deduced from these facts is not clearly stated in his opinion, but as he says, "for these reasons I disallow the entire claim I, 142,615 bolivars," it is fair to infer that he is of the opinion that this conduct on the part of the managing director absolved the Government from all liability for the derailment of the train from Maracay to Cagua and for the suspension of traffic.

The Commissioner for Germany is, however, of the opinion that there is no evidence of the charge that the railroad or its managing director were in any wise connected or in complicity with the revolutionists, and he somewhat warmly resents this imputation against the company. While he does not expressly make the claim, it is fairly inferable that he bases the right of the company to damages for the suspension of traffic upon the agreement of the Government to guarantee the company as above stated. This agreement, he says, was made through the exchange of diplomatic notes, the imperial legation reserving to the railroad the right to collect for injuries and losses owing to the suspension of traffic. The actual agreement, however, makes no reference to either diplomatic notes or to a reservation of a right to collect for injuries and losses owing to the suspension of traffic.

The umpire is unable to concur in the opinion of either of the Commissioners. In his opinion there is not sufficient proof to establish any complicity of the managing director with the revolutionists, although his peculiar if not inexplicable conduct in the transaction might naturally lead the Government to suspect it. On the other hand, the umpire is clearly of the opinion that the contract between the minister of public works and the railroad, in which the minister attempts to bind the Government for all the injuries which the railroad may suffer because of its performance of a lawful act, if not duty, in transporting troops and material of war to enable the Government to put down a rebellion, is utterly invalid—first, because it is contrary to public policy and conflicts with the highest law of any nation, the safety of its people; and, second, because it is the duty of a railroad company which exercises public functions, and it a quasi public corporation, to carry all freight and passengers not in themselves obnoxious which may be offered for transportation. Moreover, the company was bound by its express agreement to carry troops and munitions of war in the article of its concession which stipulated the rates of fares and freights to be paid. It is utterly inconsistent with the constitutional powers of a government and with the most sacred rights of its people to hold that a railroad company may, upon the mere basis of threats of persons, anonymous or not, to commit unlawful acts, decline to perform a lawful act. Revolutions are unlawful—are positively illegal; their object is to break down the de jure and de facto government and to destroy

the existing system of law; their leaders and followers are by the laws of all civilized nations guilty of the highest crime known to the law, treason, and until success, therefore, anyone who aids or abets a revolution is a violator of the law and any citizen who omits or fails to assist the government violates his duty as a citizen. And while a corporation has no political status, one created by a government with special and quasi public privileges owes the legal duty to that government to exercise its franchise in the latter's behalf and for its assistance.

For these reasons the railroad company, in the opinion of the umpire, can base no claim upon its agreement.

The liability of Venezuela, therefore, for the suspension of traffic in 1901 must depend upon general principles of law. There can be no reasonable doubt that it is the right of a government, in situations of danger or organized rebellion and revolution, to take such measures as it may deem proper to prevent the passage of persons, either for travel or business, from one point to another in the localities where there are armed and organized troops of insurrectionists, and to this end it certainly has the power and the right to suspend traffic upon any line of transportation; but this right is coupled with a corresponding duty, which is to make proper compensation to the company in cases other than those where the territory traversed by the railroad is the theater of active warlike operations between armed forces.

The Commissioner for Venezuela does not specifically claim that Venezuela had the right to suspend traffic over the railroad because the latter had lent itself to, if not associated itself with, the revolutionary movement of Matos, but he distinctly claims that the railroad had so associated itself, and that therefore, inasmuch as the railroad was carrying goods for the revolutionists, and also persons who were enabled by such facilities of travel to assist the revolutionists and do great harm to the Government, it was in the power of the latter, for which it refused to carry troops or munitions of war—

to order that if no service could be given it, as the requirements of public safety and order demanded and in accordance with its contract with the company, neither could there be any service for individuals or enemies of public peace.

Reduced to a legal proposition, his position is, that because of the unauthorized refusal of the company to exercise its functions at the demand of the Government the latter could abrogate its contract with the company pro tanto and suspend the exercise of its franchise. In effect this is to claim that the company had put itself in the position in which an alien enemy is regarded in international law, and thereby had lost, at least temporarily, the right of enjoyment of its otherwise lawful privileges.

Whether this position could be successfully maintained if the facts warranted its premises is doubtful, but in the opinion of the umpire the testimony does not make out such a case. There is some evidence tending to show support of the revolutionists by individual employees of the company, but the umpire concurs in the view of the Commissioner for Germany that so far as the company and its principal management were concerned there is not sufficient evidence against them. The testimony shows that in the few cases in which such individual action is shown such individuals were immediately and definitely discharged from the service of the company, or only reemployed when the Government withdrew its objection. He can not, however, assent to the proposition of the Commissioner for Germany that because the

Government then was not constitutionally organized, but only provisionally exercising the power into which it had come by force of arms, it did not have in the premises the legal rights of a constitutional government. In the opinion of the umpire, it was a de jure as well as a de facto government. In deciding this claim, therefore, the company must be acquitted from any such charge, and the question of the liability of Venezuela for the damages for the suspension of traffic must be determined without regard to such charge.

The same considerations lead to the conclusion also that the liability of Venezuela for injuries to and seizures of property of the railroad company by revolutionists must be determined in the same way. The claimant charges that the injuries to its property were in consequence of its transportation of troops and munitions of war for the Government. In the opinion of the umpire, however, this claim is not substantiated by the testimony. The mere fact that revolutionists destroyed the railroad at various points connected with active military operations raises no presumption that such injuries were in retaliation of or punishment for the lawful exercise of the company's powers in carrying Government troops and munitions of war. The irresistible presumption is that the revolutionists would destroy the railroad wherever and whenever they thought such destruction would place obstacles in the way of the successful military operations of the Government. The liability of Venezuela, therefore, must depend upon the general principles of international law, as modified by her admission in the protocol of liability for wrongful acts of revolutionists. Under them the umpire is of opinion that the case of the company differs in no respect from that of any private individual in like predicament, and under the former decisions of the umpire Venezuela is liable.

Coming to the consideration of the claim upon its merits, it will be more convenient to take up the items separately and in the order in which they are presented.

Part 1 of item 1 of claim I is for 6,215 bolivars for damages caused by the derailment of the train taken by General Bello from Maracay to Cagua on the night of the 19th of December. It appears from the proofs that the engineer, Sanchez, refused to recognize the authority of General Bello, because the regulations of the company did not authorize an assistant engineer to send out special trains, and because the instructions of the Government limited the authority to ask for special trains to the civil and military chiefs of the districts of La Victoria and Valencia. Further, because the railroad was not equipped for night service and stations are not occupied, and the signal service and track service were entirely suspended during these hours. In addition, the Cagua station on the day in question had notified the Maracay station that the railroad would probably be destroyed by revolutionists. It appears, however, that President Alcántara subsequently approved the request of General Bello, and in such an emergency as this appears to have been it is doubtful if the ordinary regulations of the company applied. The proofs tend to show that the rails and ties were taken up by revolutionists.

In view of all the circumstances, the umpire is of opinion that the claimant is entitled to recover upon the ground that General Bello, having taken control of the train under the circumstances, having knowledge of all the facts above stated as to the condition of the road

for night service, and the notice from Maracay of a probable raid on the road, made the trip at his peril, and did not exercise the necessary amount of care that he should. It is true that there is a dispute as to the time of the trip and the rate of speed, but under the circumstances under which the trip was made the speed of the train should not have been greater than would allow the stoppage of the train in the distance which the headlight of the engine would show an obstruction or break in the road.

As the Commissioner for Venezuela makes no objection as to the amount of the item, it is therefore allowed at the amount claimed.

Part 2 of item 1 of claim I is for the suspension of all traffic on the railroad from the 23d of December, 1901, to the 8th of January, 1902, inclusive, at 8,000 bolivars per day (136,000 bolivars), and for the suspension of train 6 on January 9 from Los Teques to Caracas, 400 bolivars.

This 8,000 bolivars per day is arrived at by taking the average of the operating expenses of the road per day in the years 1897 to 1901, 4,858 bolivars, less 9 tons of coal per day, at 60 bolivars per ton, 540 bolivars, making 4,318 bolivars. Adding thereto the interest at 3 per cent per annum on the capital of the company (which is 75,000,000 bolivars, less 36,000,000 bolivars of 5 per cent bonds of the Venezuelan loan of 1896 given in exchange for the 7 per cent guaranty of the Government of Venezuela, leaving capital of 39,000,000 bolivars), 3,250 bolivars per day, plus the proportional deduction of value for wear and tear on locomotives and cars, superstructure of the line, viaducts of iron, buildings, shops, water tanks, and other constructions, 1,179 bolivars, aggregating 9,347 bolivars per day.

The claimant submits a statement of traffic receipts for the month of January, 1901, which averages 7,848 bolivars, and takes for a basis of its claim the sum of 8,000 bolivars per day instead of the above sum of 9,347 bolivars per day. It also submits a statement of operating and other expenses from 1897 to 1901, both inclusive, from which the daily operating expenses of the company appear to be 4,858 bolivars. But it does not appear that the claimant gives any credit for these expenses as against its traffic receipts.

It is evident that the basis of computation in the *expediente* by which the per diem loss of 9,347 bolivars is reached is not sustainable. It is arrived at by taking the total operating expenses of the road, less the consumption of coal, and adding thereto interest at 5 per cent on the amount of capital of the company, less the 36,000,000 bolivars in Venezuelan bonds, and again adding depreciation in value of physical property. For some reason, which is unexplained, while the total receipts of the month of January, 1901, are given, the operating expenses for that month are not given, but the average daily operating expenses for the years 1897 to 1901, inclusive, are given. A representative of the company, at the suggestion of the Commissioner for Germany, appeared before the Commission to explain the *expediente*. As a result of his examination by the umpire the Commission requested a statement of the operating expenses of January, 1901. This has been furnished and it shows a daily net profit of receipts over operating expenses of 3,463.60 bolivars. But included in the operating expenses is an item for new structures and permanent betterments of the property in the amount of 6,020.55 bolivars. Ordinarily an expenditure of this character is not considered a proper charge to

operating expenses. In view, however, of the circumstances in the case, and the belief of the umpire that on account of the unsettled state of the country in January, 1902, the receipts of the road would not have equaled those of the corresponding month of 1901, the umpire accepts the figures submitted by the company as to operating expenses. Upon this basis, the correctness of which can not be questioned, the company's loss during the 17 days' suspension was 58,881.20 bolivars, to which add for the suspension of train 6, on January 9, 1901, 400 bolivars, and we have for part 2 of claim I, 59,281.20 bolivars, upon which interest is to be computed at 3 per cent per annum up to and including December 31, 1903.

Item 2 of claim I is for interest on item 1, calculated at 12 per cent per annum, compounding with half-yearly rests, amounting to 47,635.86 bolivars. The legal rate of interest in Venezuela is 3 per cent per annum. This item is disallowed.

Part *a* of item 1 of claim II, 10,181.50 bolivars, for damages and injuries owing to transportation of troops and munitions of war, is made up of various items of detention of traffic and injuries to the road, from July 22, 1902, to September 25, 1902, of which the Commissioner for Germany is of opinion that the items specified in his opinion for 8 bolivars, 658.50 bolivars, and 95 bolivars, aggregating 751.50 bolivars, should be disallowed. An additional item on pages 2 and 3 of the statement of claim II, 250 bolivars, is for damages by guerillas, for which the umpire is of opinion the Government of Venezuela is not liable. With these deductions part *a* amounts to 9,170 bolivars.

Part *b* of item 1 of claim II, 27,000 bolivars, is for suspension of traffic and damages and injuries to the steam tramway from Guigue and for the steamer on Lake Valencia, in October, 1901, and July, 1902. The proofs establish the facts, and as no objection to the fairness of the amounts charged is made by the Commissioner for Venezuela the item will be allowed at the sum claimed. Item 1 is therefore allowed at 36,170 bolivars, with interest to be computed as above stated.

Item 2 of claim II is for interest on item 1 calculated at 1 per cent per month with a three months' rest, and is disallowed.

The sum of 141,184.15 bolivars, being a portion of part *a* of item 1 of claim III, is claimed for indemnification for the interruption and enforced suspension of traffic between the 1st of October, 1902, and the 7th of November, 1902.

The Commissioner for Venezuela is of opinion that the entire amount of this claim should be disallowed, as the suspension was a necessary part of the military operations when the army of the revolution occupied the villages of Maracay and Cagua and the forces of the Government with the President in the field were in Victoria engaged in a campaign which ended with the battle fought at Victoria. The suspension of traffic was by order of the President, in command of the armies in the field, and his minister of war.

The following, summarized from the opinion of the Commissioner for Venezuela, is believed to be a correct statement of the situation:

During this period the revolutionists of General Matos occupied, with an army of from 12,000 to 15,000 men, the villages of Maracay, Cagua, etc., and President Castro occupied La Victoria. The plan of the Matos leaders was to move upon La Victoria from Maracay on

the west and Cagua on the west and south, and also on the east from the neighborhood of Los Teques. The topography of the country is such, by reason of hills and mountains running from the north and south to the valley of the river Aragua, that the line of least resistance and of most rapid communication would be in that valley. The Great Venezuelan Railroad runs through this valley generally parallel with the river. In the attempted execution of the plan above mentioned the forces of the revolutionists approaching from the east engaged the forces of President Castro at Los Teques, while the forces of the revolutionists approaching from Maracay and Cagua engaged the President's forces in final battle at La Victoria, in which the President was completely successful. The control of operation of the railroad, therefore, would be of the most vital importance to the success of President Castro.

The umpire agrees with the Commissioner for Venezuela that the suspension of traffic over the railroad during the period of these active operations in the field was a military necessity, and that the Government was justified in directing it.

That portion of part *a* of item 1 of claim III, 28,583.25 bolivars, for damages and injuries to the railroad owing to the transportation of troops and munitions of war and the enforced suspension and interruption of traffic at various dates in the months of September, October, November, and December, 1902, is allowed by the Commissioner for Germany with the exception of 53 bolivars.

No specific objection is made by the Commissioner for Venezuela to any detail of these items, although he claims that Venezuela is not liable and generally that the amounts are greatly exaggerated. In the absence of any proof contradicting that put in on behalf of the claimant and the lack of any showing on the part of Venezuela against these amounts, the umpire is compelled to accept the claimant's proof. For these reasons he concurs in the allowance made by the Commissioner for Germany at the sum of 28,530.25 bolivars.

Part *b* of item 1 of claim III, 43,432.25 bolivars, is for damages and injuries similar to those in part *a*, in the months of April, 1900, and April, October, November, and December, 1902, and suspension of traffic of the steam tramway to Guigue and the steamboat on Lake Valencia. The Commissioner for Germany allows this part, except the charge for April, 1900, 7,800 bolivars. In this conclusion the umpire concurs, and part *b* of item 1 of claim III is allowed at the sum of 35,632.25 bolivars.

Item 2 of claim III for 12,791.88 bolivars, is for interest on item 1 at 12 per cent per annum from the 1st of January, 1903, to the 30th of June, 1903, and is disallowed.

Claim IV, 780,500.53 bolivars, as already stated, has been allowed by the Commissioners at the sum of 575,056 bolivars, in which the umpire concurs, and it will be so awarded.

The entire claim, therefore, is decided as follows:

Item 2 of claim I, item 2 of claim II, and item 2 of claim III, being for interest on items 1 of claims I, II, and III, respectively, are disallowed.

That part of part *a*, item 1 of claim III, on account of suspension of traffic from October 1 to December 1, 1902, amounting to 141,184.15 bolivars, is also disallowed.

Parts 1 and 2 of item 1 of claim I are allowed in the sum of 65,496.20 bolivars.

Item 1 of claim II is allowed in the sum of 36,170 bolivars.

That portion of part *a* of item 1 of claim III, on account of injuries to railroad, is allowed at 28,530.25 bolivars.

Part *b* of item 1 of claim III is allowed at the sum of 35,632.25 bolivars.

Making the aggregate amount of the allowances by the umpire 165,828.70 bolivars, to which is added for interest from June 15 to December 31, 1903, on the last-named sum, 2,694.71 bolivars, aggregating 168,523.41 bolivars. To this must be added the amount of claim IV, allowed by the Commissioners at the sum of 575,056 bolivars, which, however, includes interest to December 31, 1903, making the total allowance on the entire claim, including interest to December 31, 1903, of 743,579.41 bolivars.

SUMMARY OF CLAIMS.

Number.	Name of claimant.	Amount claimed.	Amount disallowed.	Amount allowed with interest.	Remarks.
		Bolivars.	*Bolivars.*	*Bolivars.*	
1	E. Becker & Co., Sucesores...	1,470.00	.....	1,867.50	
2	Christern & Co	27,098.00	.....	27,567.50	Award by umpire.
3	A. Daumen.....	800.00	.....	862.50	
4	Adolfo Ermen.....	3,400.00	3,400.00	.....	
5	Max Fischach.....	24,000.00	23,980.00	20.00	Do.
6	Richard Friedericy.....	24,000.00	23,980.00	20.00	Do.
7	Otto Kummerow	3,200.00	3,200.00	.....	Do.
8	Carl Loges.....	33,000.00	28,000.00	5,087.50	
9	Otto Redler & Co.....	21,312.56	.....	21,686.25	Do.
10	Heinrich Schüssler.....	38,616.04	30,616.04	8,000.00	Do.
11	Van Dissel & Co	51,000.00	51,000.00	.....	Do.
12	Hugo Valentiner.....	21,152.60	19,512.60	1,665.00	Do.
13	Actien Gesellschaft für Beton und Monierban.	569,986.00	207,986.00	362,000.00	
14	Julius Becker	8,900.00	2,800.00	6,198.75	
15	Adolfo Ermen & Co	74,935.80	22,935.80	52,845.00	
16	Erich Erichsen.....	960.00	335.00	625.00	
17	Compañia del Gran Ferro-carril de Venezuela.	931,186.50	224,473.13	743,578.75	Do.
18	Carl Henkel.....	371,206.71	230,906.71	140,300.00	
19	Sucesion Müller.....	13,460.00	5,240.00	8,342.50	
20	Roberto Scharf.....	500.00	.....	500.00	
21	Alberto Wittmer	8,218.48	2,168.48	6,050.00	
22	Luis Augusto Bischoff	4,350.00	350.00	4,000.00	
23	J. Luis Fulda.....	5,000.00	.....	5,077.50	Do.
24	Hermann Richter.....	88,108.00	38,820.00	50,060.00	Do.
25	Guillermo Wenzel & Co	24,751.63	24,751.63	.....	Do.
26	Hermann Ahrensburg.....	104,523.65	104,523.65	.....	Dismissed without prejudice.
27	Becker, Gosewisch & Co., Sucesores.	1,919.68	.....	1,947.50	
28	H. Marcus & Co	4,697.24	.....	4,855.00	
29	Julius Michaelis.....	10,000.00	4,000.00	6,000.00	
30	Maria Fresch de Kinzler.....	42,016.00	23,256.00	19,041.25	
31	John Roehl.....	994.84	994.84	.....	Award by umpire.
32	Margarita S. de Schacht.....	2,200.00	1,400.00	896.25	
33	August Schriever & Co	24,500.00	.....	28,052.50	
34	Becker, Gosewisch y Co., sucesores cesionarios de I. Hanser y Co., of Barquisimeto	22,708.36	3,771.36	19,216.25	
35	G. Valentiner y Co	1,230.63	.....	1,248.75	
36	Augusta W. de Berghänel....	12,550.00	11,800.00	847.50	
37	Adolfo Ermen	29,515.20	400.20	29,520.00	
38	Otto Metzger	20,000.00	17,000.00	3,000.00	Do.
39	Otto Metzger & Co.....	3,400.00	1,100.00	2,332.50	
40	Carl Möhle	20,522.88	5,891.00	14,832.50	Do.
41	A. E. Möller & Co	76,958.00	60,367.00	16,822.50	
42	Gebrüder Droege.....	22,489.00	14,489.00	8,105.00	
43	Hamburg Venezuela Plantagen Gesellschaft mit beschränkter Haftung.....	488,929.23	458,831.23	30,097.50	Do.

The Venezuelan Government admit their liability in cases where the claim is for injury to persons and property and for wrongful seizure of the latter, and consequently the questions which the Mixed Commission will have to decide in such cases, will only be:

(*a*) Whether the injury took place or whether the seizure was wrongful; and,

(*b*) If so, what amount of compensation is due.

In other cases the claims will be referred to the Mixed Commission without reservation.

ARTICLE V.

The Venezuelan Government being willing to provide a sum sufficient for the payment, within a reasonable time, of the claims specified in articles III and IV and similar claims preferred by other Governments, undertake and obligate themselves to assign to the Italian Government, commencing the first day of March, 1903, for this purpose, and to alienate to no other purpose 30 per cent. of the customs revenues of La Guaira and Puerto Cabello. In the case of failure to carry out this undertaking, and obligation, Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government in respect of the above mentioned claims, shall have been discharged.

Any question as to the distribution of the customs revenues so to be assigned, and as to the rights of Italy, Great Britain and Germany to a separate settlement of their claims shall be determined in default of arrangement, by the Tribunal at The Hague, to which any other power interested may appeal. Pending the decision of the Hague Tribunal the said 30 per cent of the receipt of the customs of the Ports of La Guaira and Puerto Cabello are to be paid over to the representatives of the Bank of England at Caracas.

ARTICLE VI.

The Mixed Commission shall consist of one Italian member and one Venezuelan member. In each case, where they come to an agreement their decision shall be final. In cases of disagreement, the claims shall be referred to the decision of an umpire nominated by the President of the United States of America.

ARTICLE VII.

The Venezuelan Government further undertake to enter into a fresh arrangement respecting the external debt of Venezuela with a view to the satisfaction of the claims of the bondholders. This arrangement shall include a definition of the sources from which the necessary payments are to be provided.

ARTICLE VIII.

The Treaty of Amity, Commerce and Navigation between Italy and Venezuela of June 19, 1861, is renewed and confirmed. It is however expressly agreed between the two Governments that the interpretation to be given to the articles 4 and 26 is the following:

According to the article 4, Italians in Venezuela and Venezuelans in Italy cannot in any case receive a treatment less favorable than the natives, and according to the article 26, Italians in Venezuela and Venezuelans in Italy are entitled to receive, in every matter and especially in the matter of claims, the treatment of the most favored Nation, as it is established in the same article 26.

If there is doubt or conflict between the two articles, the article 26 will be followed.

It is further specially agreed that the above treaty shall never be invoked in any case against the provisions of the present Protocol.

ARTICLE IX.

At once upon the signing of this Protocol, arrangements shall be made by His Majesty's Government, in concert with the Governments of Germany and Great Britain to raise the blockade of the Venezuelan ports.

His Majesty's Government will be prepared to restore the vessels of the Venezuelan Navy which may have been seized and further to release any other vessel captured under the Venezuelan flag during the blockade.

The Government of Venezuela hereby obligate themselves and guarantee that the Italian Government shall be wholly exempted and relieved of any reclamations or claims of any kind which may be made by citizens or corporations of any other Nation, for detention or seizure or destruction of any vessel or of goods on board of them, which may have been or which may be detained, seized or destroyed, by reason of the blockade instituted and carried on by the three Allied Powers against the Republic of Venezuela.

ARTICLE X.

The Treaty of Amity, Commerce and Navigation of June 19th, 1861, having been renewed and confirmed in accordance with the terms of article VIII of this Protocol His Majesty's Government declare that they will be happy to reestablish regular diplomatic relations with the Government of Venezuela.

HERBERT W. BOWEN.
E. MAYOR DES PLANCHES.

WASHINGTON, D. C., *February 13, 1903.*

PROTOCOL OF MAY 7, 1903.

Mr. Herbert W. Bowen as Plenipotentiary of the Government of Venezuela, and the Royal Italian Ambassador Nobile Edmondo Mayor des Planches as representative of the Royal Italian Government, in order to carry out the provisions contained in articles IV, V and others of the Venezuelan-Italian Protocol of February 13th 1903, have signed the following agreement with reference to the Mixed Commission which shall have to decide upon the Italian claims against the Government of Venezuela:

ARTICLE I.

The members of the Mixed Commission who are to be appointed by the Government of Venezuela and by the Royal Italian Government shall meet at Caracas on the first of June, 1903.

The umpire who is to be nominated by the President of the United States of America shall join the Commission as soon as possible.

The umpire is to be consulted in the proceedings and decisions whenever the Venezuelan and the Italian Commissioners fail to agree, or otherwise deem it appropriate to consult him.

Whenever the umpire will be present at the meeting he shall preside.

If after the convening of the Commission the umpire or either of the commissioners should be unable to fulfill his duties, his successor shall be appointed forthwith in the same manner as his predecessor.

The Venezuelan and the Italian Commissioners may each appoint, if necessary, a secretary versed in the Spanish and in the Italian languages to assist them in the transaction of the business of the Commission.

ARTICLE II.

Before assuming the functions of their office the umpire and both the commissioners shall make solemn oath or declaration carefully to examine and impartially to decide according to the principles of justice and the provisions of the Protocol of the 13th of February, 1903, and of the present agreement, all claims submitted to them; the oath or declaration so made shall be embodied in the record of their proceedings.

The decisions of the Commission shall be based upon absolute equity, without regard to objections of a technical nature or of the provisions of local legislation. They shall be given in writing both in Spanish and Italian. The awards shall be made payable in English gold or in silver at the current rate of exchange of the day at Caracas.

ARTICLE III.

The claims shall be presented to the commissioners by the Royal Italian Legation at Caracas before the first day of July, 1903. A reasonable extension of this term may eventually be granted by the commissioners. The commissioners shall be bound to decide upon every claim within six months from the day of its presentation, and in case of the disagreement of the Venezuelan and of the Italian Commissioners, the umpire shall give his decision within six months after having been called upon.

The commissioners shall be bound before reaching a decision, to receive and carefully examine all evidence presented to them by the Government of Venezuela and the Royal Italian Legation at Caracas, as well as oral or written arguments submitted by the agent of the Government or of the Legation.

The secretaries mentioned in Article I Section 4 of this agreement shall keep an accurate record of the proceedings of the Commission; the Protocols have to be drawn up in duplicate copies which have to be signed by the secretaries and the members of the Commission that have taken part in the proceedings. After the work of the Commission will have come to an end, a certified copy of each of these Protocols is to be handed over to the Government of Venezuela and to the Royal Italian Legation.

ARTICLE IV.

Except as herein stipulated, all questions of procedure shall be left to the determination of the commissioners, and, in case of their

disagreement, the umpire shall decide them; in particular, they shall be authorized to receive the declaration of the claimants or their respective agents, and to collect the necessary evidence.

ARTICLE V.

The umpire shall be entitled to a reasonable remuneration for his services and expenses, which is to be paid in equal moieties by the Government of Venezuela and by the Royal Italian Government, as well as any other expenses of the said Commission.

The remunerations to be granted to the two other members of the commission and to the secretaries are to be paid by the Government by whom they have been appointed. In the same way each Government will have to pay any other expenses which it may incur.

Washington, D. C., May 7, 1903.

HERBERT W. BOWEN. [SEAL.]
E. MAYOR DES PLANCHES. [SEAL.]

PERSONNEL OF ITALIAN-VENEZUELAN COMMISSION.

Umpire.—Jackson H. Ralston, of Washington, D. C.
Italian Commissioner.—Ruffillo Agnoli.
Venezuelan Commissioner.—Nicomedes Zuloaga.
Italian Secretary.—Adelchi Gazzurelli.
Venezuelan Secretary.—Segundo A. Mendoza.
Umpire's Secretary.—William Giusta, of Washington, D. C.

RULES OF ITALIAN-VENEZUELAN COMMISSION.

I.

Meetings.—The Commission shall meet on Thursdays and Saturdays at 9 a. m. and at such other times as in its judgment may seem necessary in order to expedite its business.

II.

Minutes.—The secretaries shall keep duplicate originals of the minutes of the proceedings, entered in books provided for the purpose and prepared, respectively, in Italian and Spanish, which minutes are to be presented at the opening of the subsequent meeting, and when found satisfactory shall be signed by the umpire, if present at the proceedings to which they relate, and by the remaining members of the Commission.

III.

Docket.—Each secretary shall keep a docket, entering thereon the respective claims by the name of the individual claimant, giving each a number, and stating the date of presentation to the Commission, and also the date and nature of every other paper filed or transaction of the Commission or umpire relating thereto.

IV.

Reply of Venezuela.—At any time before decision is rendered in a particular case the Government of Venezuela, through its agent, shall have the right to oppose the claim, presenting such proofs and allegations as it may deem proper or requesting the delay for so doing.

V.

Custody of records.—The secretaries shall be charged with the custody of all records submitted to the Commission. When the labors of the Commission shall be entirely terminated, original records shall be returned to the Government depositing them. The secretaries shall also file with their respective Governments the books kept by them. All papers shall be indorsed by the secretaries with the date of filing.

At any time the Government of Venezuela or the legation of Italy, or their agents, shall be entitled to receive from the secretaries a copy, duly certified by them, of whatever document may be found in the archives of the Commission. Certified copies of documents which are of such nature that they can not conveniently be removed from the archives of the Royal Italian legation or of the Government of Venezuela may be offered in evidence, the right at all times to examine the originals being accorded to the Commission or to the opposing party.

VI.

Opinions.—The opinions of the several commissioners (including the umpire) shall be transcribed in duplicate books kept severally therefor by the secretaries and carefully compared with the originals.

VII.

In every other rule of procedure the Commission shall refer to the provisions of the protocol of May 7, 1903, and in case of disagreement between the commissioners as to the proper interpretation or application of said provisions the umpire shall decide.

VIII.

Amendments.—The Commission reserves the right at all times to change these rules as occasion demands.

OPINIONS ON QUESTIONS OF PROCEDURE.

TIME FOR SUBMITTING CLAIMS.

Extension of time for submitting claims should only be granted upon cause shown. Such cause being shown an extension is granted under conditions to November 1, claims to be notified to the Commission by August 9.

RALSTON, *Umpire:*

I have carefully considered the application, under date of June 8, made by the royal Italian legation at Caracas for a reasonable delay, for the purpose of transmitting claims of Italian subjects as well as of

obtaining proofs in connection therewith, such delay being requested under the protocol of May 7, by virtue of which, together with that of February 13, 1903, this tribunal is in existence, and the application in question being referred to me as umpire because of a difference of opinion arising between the Commissioners for Italy and Venezuela.

The language of the protocol is that—

> The claims shall be presented to the Commissioners by the royal Italian legation at Caracas before the 1st day of July, 1903. A reasonable extension of the term may eventually be granted by the Commissioners.

According to my interpretation of the words "may eventually" the Commission is not obliged as a matter of course to grant the delay, but it should only be allowed upon a reasonable cause shown. I feel myself sustained in this opinion by the definition of the word "eventual" given in Webster's Dictionary, which is, "in an eventual manner; final; ultimate." The word "eventually" is also defined as "coming or happening as a consequence; final; ultimate; (law) dependent on events; contingent."

The reasonable cause justifying extension is stated by the royal Italian legation at Caracas to exist in the difficulty, which has continued up to the present time (though now with diminishing force), of reaching certain portions of the Republic by mail or otherwise, and further, in the fact that owing to recent disturbances many Italian merchants have gone to distant regions to avoid danger, and apparently as a consequence it has been impossible for them to yet present their claims, and will be impracticable to present them by July 1. That the application is reasonable and justifies some delay is evidenced by the fact that the Commissioner for Venezuela offers no objection to an extension of thirty-two days, and this premise being granted, it remains for me to consider what, under all the circumstances, would be a proper period.

From such information as I have been able to gather, a letter from Caracas to the most distant point in Venezuela reached at all by the post-office authorities may be sent in twenty days, and even as to such a place as Ciudad Bolívar, now in possession of the revolutionists, my information is, that by transshipment at Trinidad a letter will reach its destination in about a week.

I further consider it is to be remembered, in reaching a conclusion, that the first protocol looking to the formation of a mixed commission was signed February 13, and that the knowledge of it was sought to be disseminated by the Italian legation as thoroughly as possible some time in the month of April.

It has, therefore, seemed to me that an extension of forty days from July 1 (sufficient to enable a letter from Caracas to reach the most distant part of Venezuela and a reply to be obtained), would, in addition to the period of four and one-half months now elapsing, from February 13 to July 1, meet all reasonable requirements.

Furthermore, however, the Commission might properly take into consideration at a later period any claim the existence of which should be made known to the Commission at any time before the termination of the additional time now proposed.

In view of the foregoing, the following order may be entered upon the minutes:

> *Ordered*, That the period for the presentation of claims before the Italian and Venezuelan Commission be extended to and including August 9, 1903: *Provided*,

however, That the royal Italian legation shall be at liberty after that date, and before November 1, 1903, to present any claim, official knowledge of the existence of which shall be brought to the Commission on or before August 9, but with relation to which, for lack of data, the royal Italian legation shall not then have been able to submit a formal claim: *And provided further*, That for cause shown, on or before said date, this order may be enlarged as of this day.

TIME EXTENDED FOR SUBMITTING CLAIMS.

Further allowing an extension of time for submitting certain claims to November 1, 1903.

RALSTON, *Umpire:*

The royal Italian legation has duly submitted an application for an enlargement of the time for presenting certain claims in accordance with the reservation contained in the order of the umpire of June 18, 1903, and in support shows that thirty claims are expected to arrive from Ciudad Bolívar, but that the names of the possible claimants have not yet come to hand; and further, that although registered letters have been sent to some 37 places named, neither the original letters nor the signed receipts have been returned, indicating want of proper postal communication.

The umpire believes that liberality should be shown in the application of the clause of the protocol referring to extensions, to the end that this Commission may fulfill as far as possible the object of its formation by determining all Italian claims. At the same time he recognizes that the labors of the Commission must be brought to a speedy finality.

He will therefore sign an order enlarging as of the date of June 18 the order then made, so that the 30 claims to be submitted from Ciudad Bolívar and any from the 37 places named may be entirely presented for action by November 1.

On behalf of the Venezuelan Government the umpire is asked to interpret the order of June 18, so that all claims, the names of whose owners are at this time to be submitted to the Commission, may at once be fully presented.

The umpire recognizes the difficulty of the situation in this respect, owing to the large number of papers recently received by the royal Italian legation, and at this time prefers accepting the assurance of the legation that all claims will be presented as rapidly as the papers can possibly be arranged. He does, however, in the enlarged order, change the former one by specifically requiring all claims to be presented formally and fully, with all supporting evidence, by November 1, his personal desire, however, being that they should be completely filed by October 1.

The royal Italian legation submits the question whether the claims not presented within the period limited shall on this account be excluded from future indemnity. So far as this Commission is concerned the answer must be that they will be excluded. It would be beyond the jurisdiction of this Commission or its umpire to make any more comprehensive ruling as to effect of the protocol upon claims not presented to it.

In view of the foregoing, the following order may be entered upon the minutes:

Ordered: That the order of June 18, 1903, relating to the presentation of claims be enlarged as of that date so as to read as follows:

Ordered, That the period for the presentation of claims before the Italian and Venezuelan Commission be extended to and including August 10, 1903: *Provided, however*, That the royal Italian legation shall be at liberty after that date and before November 1, 1903, to present formally and fully, with all supporting evidence, any claim official knowledge of the existence of which shall be brought to the Commission on or before August 10, but with relation to which, for lack of data, the royal Italian legation shall not then have been able to submit a formal claim, but with further leave to said legation to bring to the official knowledge of the Commission the names of 30 claimants at Ciudad Bolívar and whatever claimants may exist at Altagracia (de Orituco), Nutrias, Tovar (2), Betijoque, Sebruico, S. Diego, Caripe, Amparo (2), Mitón, Yaritagua, Mendoza, S. Simón, Monte Carmela, Libertad, S. José (de Sucre), Upata, Soledad, Escuque, Turmero, Rubio, Quibor, Río Caribe, Caicara, Socorro, Carajal, Jabón, Aragua (2), Paraguaipoa, Cocorote, Guasipati, Cumarebo, and Tacarigua, San Fernando de Apure, Guama, Sta. Ipire, Colonia Bolívar, and Palmíra, on or before September 21, presenting their claims formally and fully, with all supporting evidence, before November 1, 1903.

Reception of Evidence and Claims.

(By the Umpire:)

Additional evidence in support of reclamations may be received after the time for filing claims has expired.

Where within the time limited for the filing of claims nothing more has been presented than a statement (unsupported by proof) that a claim exists, no evidence in substantiation is thereafter receivable.

A "claim" must at least be sufficient to inform the respondent of the right claimed or the wrong inflicted.

Agnoli, *Commissioner* (claim referred to umpire):

Regarding the question of admitting claims, lacking documents, to-day presented to the Commission by the royal Italian legation, the Italian Commissioner remarks as follows:

It would seem that there can be no doubt except as regards claims not accompanied by a statement of damages, because claims having only said statement have been admitted and even favorably considered in other commissions. A simple written or even verbal demand may have sufficient evidence of veracity to enable the Commission, which is a tribunal of absolute equity, to take it into consideration and pass upon it. In any case the declarations of a claimant constitute a proof which should be studied and weighed by the Commission. Such declaration may even assume the character of an absolute proof, if supported by the sworn statement of the claimant. In practice this principle has been admitted by this Commission in two instances of claims received. The Commission would judge, therefore, said claims when both Commissioners within the limits of the protocol of May 7, 1903, find it proper to pronounce thereon.

It can not be admitted in justice and equity that the Venezuelan Commissioner should have six months from the date of presentation of claims to adduce counterproofs without the legation having an equal right in favor of the claimants.

There now remain only the Ciudad Bolívar and a few other claims in which the legation has not so far been able to produce the formal demand of the claimants nor state precisely the sum claimed. Regarding the demand of the claimant, that seems to be adequately substi-

tuted by that of the legation or consular agent who legally represents the claimants. As to the statement of the sum claimed, this does not seem essential, inasmuch as the Commission has the right to determine the amount of the award on a simple statement of the facts in the case, showing that the claimant has actually suffered damages or violence, even though no definite sum be claimed.

The Commission has considered a number of claims in which, perhaps from a sense of delicacy in regard to injury to the person, or illegal incarceration, claimants abstained from fixing their own indemnity, leaving the same to be determined by the Commission.

These reasons would appear sufficient to cause the admission of the claims this day presented to the Commission by the royal legation, whatever be the condition of their documentation.

But other motions, based on special circumstances, support this view.

The legation, giving undoubted proof of respect for and confidence in the integrity of local tribunals, had advised all claimants to rely upon them for the compilation of the necessary evidence. The consequence of this has been that while in other commissions many claims were received based on proof prepared in the respective consulates, this Commission has not done so. Recourse to the consulates would have facilitated in all respects, but principally in the economy of fees, and hastened the presentation of claims; whereas local tribunals, lately closed for considerable periods or but recently reestablished in others, as in the case of Ciudad Bolívar, where the revolution lasted longer than elsewhere and operated with extreme slowness, have been the cause of delays and postponements which it would hardly be fair to saddle on the claimants.

The legation has, besides, proofs of frequent nontransmission or missending of both mail and telegraphic communications, all of which not chargeable to and by no fault of claimants would have the effect of prejudicing their interests in the exercise of their legitimate rights should the Commission rigidly and with severity interpret the clauses of the protocol and precedent decisions of the umpire in this regard.

It is proper to note that if the claims presented October 31 are not admitted, giving sufficient time for the presentation of necessary proof, the legation would be compelled to withdraw them, thus leaving open many questions which it is the common wish and interest to have settled and which the Commission, according to its high mandate of peace and justice, is morally bound to solve, leaving, as far as possible, only unencumbered ground behind it.

Now, as regards more especially the proofs and counter proofs, the reciprocal faculties of the Commissioners (of which, however, the legation and the Italian Commissioner intend to make only the most moderate use as regards the time limit) are determined by Article III of the protocol and can not well be the object of any restrictions or decisions whatsoever, as the honorable umpire is pleased to note in his elaborate decision of June 18 last.

No opinion by the Venezuelan Commissioner.

RALSTON, *Umpire:*

Upon disagreement between the honorable Commissioners for Italy and Venezuela, two questions are presented to the umpire, which may be summarized as follows:

1. May additional evidence be received on behalf of Italian claimants in cases where formal claims have been filed?

2. May evidence be received in cases where nothing more has been filed than a statement that a certain person, located at a given place (as Ciudad Bolívar), has a claim, but has been delayed in the presentation of his proof because of inadequate mail facilities or judicial delay in taking proof?

The provisions in the protocol of May 7, 1903, bearing upon the matter read as follows:

ARTICLE III. The claims shall be presented to the Commissioners by the royal Italian legation at Caracas before the first day of July, 1903. A reasonable extension of the term may eventually be granted by the Commission. The commissioners shall be bound to decide upon every claim within six months from the day of its presentation, and, in case of disagreement of the Italian and Venezuelan Commissioners, the umpire shall give his decision within six months after having been called upon.

The commissioners shall be bound, before reaching a decision, to receive and carefully examine all evidence presented to them by the royal Italian legation at Caracas and the Government of Venezuela, as well as oral or written arguments submitted by the agent of the legation or of the Government.

The umpire has already passed two orders touching the general subject: The first of June 18, extending the time for the presentation of claims to and including August 9, but permitting the royal Italian legation, after that date and before November 1, to present any claim official knowledge of the existence of which should be brought to the Commission on or before August 9, but with relation to which, for lack of data, the legation had not then been able to submit a formal claim, and further permitting an enlargement for cause shown, as of date of June 18.

Cause being shown on August 10, the umpire enlarged the time within which knowledge of the existence of claimants located in certain places could be brought to the Commission to September 21, the claims to be presented "formally and fully" before November 1, such extension again applying only after September 21 to such of the cases indicated as for lack of data the legation should not have been able to submit a "formal claim."

With regard to the first proposition submitted, the umpire is, on full consideration, disposed to believe that additional evidence may be received by the Commissioners, if not by the umpire, at any time before the final decision. The power so to do is found in the paragraph of Article III, prescribing that—

the commissioners shall be bound before reaching a decision to receive and carefully examine all evidence presented to them by the royal Italian legation at Caracas and the Government of Venezuela, etc.

No restriction as to time of presentation of evidence (save that necessarily involved in the limitation of time for the consideration of claims by the Commission) is contained in the protocol, and the umpire does not feel that he can now make any, or can so construe his prior orders as to create such limitation. The first question will therefore be answered in the affirmative.

The second question is somewhat different. The protocol limits the time for the presentation of claims, with power in the Commission to extend the period. Within the time named by the orders of extension the legation, as above stated, has presented what is termed a "promemoria," but which in the cases under consideration contains abso-

lutely no information relative to the claim save the name of the claimant and his locality. The fundamental question is whether this constitutes the presentation of a claim, for if it does, then, as above indicated, statements and supporting evidence may yet be received.

Webster's Dictionary defines "claim" as follows:

> Claim: 1. A demand of a right or supposed right; a calling for something due or supposed to be due; an assertion of a right or fact.
> 2. A right to claim or demand something; a title to any debt, privilege, or other thing in possession of another; also a title to anything which another should give or concede to or confer on the claimant. "A bar to all claims upon land." Hallam.
> 3. The thing claimed or demanded; that (as land) to which anyone intends to establish a right; as a settler's claim, a miner's claim.

It appears to the umpire that the "pro-memorias" referred to contain none of the elements of a claim within the natural application of the definition. They are not the demand of a right or supposed right, for they do not inform us of the amount or nature of the right claimed or the wrong inflicted. They assert nothing save that the legation is informed that a certain man claims something unknown against Venezuela; in other words, that he is a claimant. Before Venezuela can be expected to answer to a claim or demand she must be informed of its nature. This information is not furnished.

But it is said that there is sufficient basis to permit the furnishing of the information at a later time. Let us see. If this position be correct, carrying it to its ultimate, the lacking data may be furnished six months off, on the last day left for the consideration of claims, and Venezuela left without opportunity for defense. It is not for a moment to be supposed that such a course would be pursued; but an interpretation which would permit it must be erroneous.

To now admit that the "pro-memorias" in question are sufficient would be to nullify the effect of the orders of June 18 and August 10, above referred to. The "pro-memorias," when analyzed, simply contain the name and address of the claimants, with an excuse for the lack of other data. By the orders referred to this information (at least as to the important thing—the name) was to have been furnished on or before August 9 and September 21, respectively. When lack of data existed by those dates for the presentation of a "formal claim," such claim could be presented before November 1. But names and places were known before the dates mentioned and were then given, but no "formal claim" was presented for "lack of data." To say to-day that these words practically mean nothing, and that what are truly to be called claims may be presented within the next six months, would expand the time for the presentation of claims far beyond the clear intent of the orders given, and infinitely beyond the practice of other commissions working under similar protocols.

The umpire gives full attention to the suggestion that the present Commission should grant all possible opportunity to claimants to present themselves, to the end that all grievances may be adjusted. He himself has been so far influenced by this feeling that he has heretofore, in fixing November 1 as the final date, given the numerous Italian claimants one month more time than that enjoyed by claimants of other nationalities. But all things must come to an end, and if claimants in Ciudad Bolívar, for instance, having enjoyed one hundred days since the taking of that city by Government troops, have failed to furnish the royal Italian legation with more than their names when, even if it were not possible to supply all needed evidence, they could

easily have given it the data required by the orders heretofore referred to, their loss must now be attributed solely to their own remissness. The umpire can not accept either irregularity of mails or vacation of tribunals as a justification for such neglect on the part of individuals. Meanwhile all power he possesses, either directly or by indirection, to extend the time for the presentation of claims has been exhausted.

The second question must therefore be answered in the negative.

BURELLI CASE.

(By the Umpire:)

Claim not having been presented within the time limited by orders of the umpire, and this delay having been occasioned by default of telegraphic officials of respondent Government, claim must be dismissed, but without prejudice to diplomatic action or judicial remedies.

AGNOLI, *Commissioner* (claim referred to umpire):

The royal Italian legation on December 23 last has presented to the Mixed Commission the unannounced claim of Giuseppe Antonio Burelli, residing at La Puerta, District of Valera, whereby, because of requisitions of merchandise and other supplies, an indemnity of 15,500 bolivars is demanded.

The writer, because of the reasons which he has the honor to mention in the course of this statement, was of opinion that the claim ought to be examined, but the honorable Venezuelan Commissioner at the session of the Commission on the 9th of the present month, declared that he could not accept it, because it was presented too late. In consequence of this difference of opinion the decision of the honorable umpire is asked.

From the documents contained in the record of the claim it is shown:

1. That Giuseppe Antonio Burelli, on August 3 last, caused to be delivered to the Venezuelan telegraphic agent of Escuque a telegram addressed to the royal Italian legation at Caracas, which ought to have received it at the latest on the following day, on account of which he would have announced the existence of his claim, the proofs of which were at that time being made before the competent judicial authority.

2. That said telegram did not reach the royal legation, through no fault of the claimant, either on August 4 or afterwards, wherefore the existence of the claim could not be announced to the Commission prior to the 9th of said month, the final date fixed for that purpose by the award of the honorable umpire of June 18.

3. That the complete documents supporting the claim for indemnity reached the royal legation on the 20th of October last past; that is to say, in due time, according to the above-mentioned award of the honorable umpire, for their transmission to the arbitral tribunal, to which in fact they were not presented prior to the 1st of November, because the announcement of the existence of the claim being wanting at the proper time the presentation of the documents in relation thereto for that reason alone was delayed.

The mere statement of these circumstances is sufficient, in the opinion of the Italian Commissioner, to justify the request of the royal legation that the Burelli claim be admitted.

There has been no negligence whatever on the part of the claimant, and it would be entirely contrary to equity that he should suffer the

consequences of the irregularity of the telegraphic agent of Escuque; that is to say, of a governmental act of Venezuela, which is solely responsible for the nonarrival of the announcement and of the delayed presentation of the claim. It is true that this does not operate in every way as a bar, but the delay in its liquidation would prejudice the claimant; and our duty is to do him prompt justice, protecting him against the injurious consequences of the fault of another.

For these reasons, the writer asks the honorable umpire to decide that the claim for indemnity in question should be submitted to the examination and to the judgment of the Italian-Venezuelan Arbitral Commission now sitting at Caracas.

ZULOAGA, *Commissioner:*

The Venezuelan Commissioner refuses to admit to the examination of this Commission the claim of G. Antonio Burelli, and he takes this position for the following reasons:

1. The term, until the 9th of August, fixed for the legation to present its notice of these claims was a term which could not be extended, and in order to fix it all the possible eventualities were taken into account, such as the failure of the mail, of the telegraph, distance, etc.

2. The irregularities of the telegraph services ought to have been especially foreseen, since when the date was fixed there was not even a telegraph to distant places, such as Valera and Escuque, because the lines had been destroyed by the revolution.

3. Foreseeing all these irregularities, the claimant ought not to have allowed his notice to go until the last minute.

4. If the Commission should admit this claim of Burelli it would open anew the term for the presentation of claims of all of those who might allege motives more or less justified for not having presented them in time.

5. The Commission has no right to admit claims.

RALSTON, *Umpire:*

The above-entitled case comes before the umpire upon difference of opinion between the honorable Commissioners for Italy and Venezuela.

It appears that the claimant, who lives at Valera, sent to the telegraphic office at Escuque on August 3, 1903, a telegram signed by him, directed to his excellency, the Italian chargé d'affaires in Caracas, notifying him of the existence of a reclamation which he expected to prove before the tribunals of the State of Trujillo, the purpose evidently being to have his name certified by the royal Italian legation to the Commission on or before August 9, 1903.

The reception of this telegram is admitted by the chief of the telegraph office at Escuque.

It so happened that the telegram was not sent, or at least never reached the legation, whose first knowledge of the existence of the claim appears to have been gained October 20, 1903, by the reception of an expediente designed to sustain it.

This expediente was not presented before the Commission prior to November 1, 1903, the legation apparently not knowing the facts with relation to the attempted telegraphing on the part of the claimant, and considering that as the claim had not been called to the attention of the Commission within the time originally specified it was too late to present the claim.

By the order of the umpire, made June 18, 1903, official knowledge of the existence of the claim should have been brought to the Commission on or before August 9 and the claim itself presented before November 1. In this case neither step was taken, through no fault, however, either of the legation or of the claimant, who did all that it was incumbent upon him to do, and if his claim is not now regularly before the Commission it is because of the failure of the officials of the Venezuelan Government to fully perform their duty.

The suggestion is made that the umpire, in the extension given for the presentation of claims, took into account the condition of the country and the necessary delays in transmission of letters and telegrams, and that he should not now be asked to virtually reopen the time limit already set.

To the umpire this argument seems in part correct and in part erroneous. He feels that the time having absolutely passed within which claims should have been presented he has no power of setting aside this limitation. On the other hand he would regard it as highly inequitable if the claimant were to absolutely lose his rights because of the failure of Venezuelan officials to perform their official duty, and in this connection he may remark that when the chief of the telegraphic station at Escuque accepted the dispatch tendered him he impliedly promised that it should be forwarded with all due promptness, and, accepting such dispatch without reservation, Venezuela (his principal) is not at liberty thereafter to say that communication was broken or the wires down, as is suggested by the honorable Commissioner for Venezuela may have been the case. Had the station agent informed the claimant promptly on August 3 that it was impossible to transmit the telegram the claimant could readily have procured transmission by other means of the desired knowledge within the time fixed by the order of the umpire.

In view of the foregoing considerations it seems to the umpire that, pending the objection raised by the honorable Commissioner for Venezuela, he can not consider the claim. Nevertheless, any order of dismissal which he might feel obliged to sign should leave the case open for such other remedies, either diplomatic or judicial, as the claimant may select. In other words, finding himself unable to grant the relief asked by the claimant in this Commission, while the jurisdictional question is raised by the honorable Commissioner for Venezuela, he is unwilling that the claimant should lose his rights because of clear negligence of other Venezuelan officials.

There are other views of the case which might be discussed, but as their consideration would bring us to substantially the same conclusions their development is omitted.

OPINIONS OF A GENERAL NATURE.

CERVETTI CASE.

(By the Umpire:)

Interest on claims can only be allowed from date of presentation to the Government or to the Commission in the absence of direct contractual relations with the Government.

Unless otherwise agreed by contract, interest will be allowed at 3 per cent per annum from such presentation to December 31, 1903.[a]

Under the protocols no interest can be allowed on awards.

AGNOLI, *Commissioner* (claim referred to umpire):

The above-mentioned claim having been submitted to the umpire in consequence of a divergence of views and appraisement between the Commissioners in regard to the proofs of the acts which gave rise to the claim proper and the amount of the damages as well as to the question of the interest which may be awarded the claimant, the undersigned reserves the right to indicate the amount to be paid in principal to Cervetti as an equitable compensation for actual damage done him, after the demonstration of the proof by the interrogatories deemed opportune on this occasion put to the claimant by the Commission.

Regarding the question of interest the undersigned contends:

1. That the adjudication of interest is in conformity with justice and equity, and impliedly comprised in the protocol.

2. That the interest in the case should run from the day on which Cervetti suffered damages to the day on which his case will be settled by the Commission, without in any wise forfeiting the interest which may eventually be conceded to claimants of any nationality, either by decision of the Mixed Commissions or by the grant of the Venezuelan Government, from the day of its award by arbitration to the day of payment.

3. That the rate of interest shall be at 5 per cent per annum.

Regarding the first point, it is held that the indemnity would not be complete and therefore not in accord with the requirements of strict equity, which alone should guide the decisions of the Commission, if interest were not allowed, excepting in cases of indirect damages and personal injuries.

The refunding to a merchant after a long time of the price only of the goods taken from him or the reimbursement to him of forced loans, also after a long time, does not constitute an equitable or integral compensation. Like to the tool in the hands of the workman, merchandise and money in the hands of the merchant constitute capital in a productive form, and may perhaps be his only resource, his only means of earning his livelihood.

The merchant must have paid interest to the hands furnishing the goods, and he from whom money has been forcibly taken or he to whom money has not been paid when due must have been compelled to procure capital on credit, and in either case the injured party must have been compelled to submit to the payment of interest, which,

[a] A like rule was adopted by the German-Venezuelan Commission (p. 584), but in the British-Venezuelan Commission interest was only allowed to the date of the awards, nothing more being asked by the English agent.

according to the local commercial conditions, must have exceeded 5 per cent.

What motive is there for denying in principle compensation for precise and certain damages? It is indisputable that the measure of redress should be fixed in a spirit of moderation.

In any event the protocols signed at Washington in no wise exclude the adjudication of interest, but rather determine that indemnity shall be accorded on the basis of absolute equity, and leave to the commissions a full and absolute liberty to deliberate on the sum to be by them accorded as an indemnity in each case.

The fact that the adjudication of interest must aggravate the financial situation of Venezuela is worthy to be taken into consideration, and it is with this in view that the undersigned has fixed the rate at 5 per cent, which, given the usages of the country, is very light indeed. It is further worthy of note that interest has been accorded in the majority of cases by arbiters and arbitral commissions, above all, in cases where decisions have been given in claims of long standing and those in which the payment could not be immediately made.

It should be sufficient to cite the very recent precedent of the "Commissions des Indemnités" in China. Various members of the diplomatic corps accredited to Peking, among which was the plenipotentiary of the United States, appointed to adopt rules for the government of claims in trust for their colleagues, established the principle adopted by all the interested powers, that the injured parties would be given interest at 5 per cent in civil and 7 per cent in commercial matters.[a]

The President of the Swiss Republic, sitting as arbiter in the large claim of Fabiani against the Venezuelan Government, awarded 5 per cent. (Moore, p. 4915.)

The United States asked and obtained from Mexico (Com., 1838–1841, Moore, History and Digest, etc., p. 1254) interest at the rate of 5 per cent and from Peru at 6 per cent. (Moore, p. 1629.)

Interest at 5 and 6 per cent were likewise conceded by the Spanish Spoliation Commission and in the Panama riot and others. (Moore, p. 1004, 1381.)

The equity of the principle which the undersigned desires to see adopted seems from the foregoing precedents to be sufficiently established, though admitting that in some cases the request for interest had not been advanced at the time when the agreement as to the government of claims had not been formulated, or for other reasons.

The mere fact that the royal Italian legation in presenting claims did not request interest does not imply a renunciation of them. The legation believed it its duty to limit itself to the presentation of claims, leaving to the Commission the full liberty of deciding as to the amount and as to the form of the compensation.

If its silence in this regard is to be interpreted as a renunciation of interest, the legation will demand interest on all claims to be hereafter presented, as well as on those now in the hands of the Commission.

Even the silence of a claimant in this respect can not be considered as a renunciation, which latter should be explicitly stated, as otherwise it would be strongly contrary to the principles of equity and justice that interest should be accorded to a claimant asking it, while refusing

[a] Foreign Relations, Appendix, 1901, p. 107.

it to another claimant who, through neglect or ignorance of the law, had failed to apply for it.

The question should be decided, after due examination, according to general and uniform criteria, as well in the case of Cervetti as in all the others.

If the silence of claimants with regard to interest is to be taken as a renunciation, similarly should it be considered a renunciation of indemnity when, by reason of illiteracy, or because not deemed by them necessary, a formal claim for indemnity does not accompany the testimony of witnesses as to the loss of receipts attesting forced loans or similar documents.

The Commission would most certainly depart from the principles of justice and equity, which should alone inspire it, if it were to reject all claims so presented, and the same principles and the same rules apply with equal force to the question of interest.

Regarding the second point, by the same reasons of equity, interest should run from the date on which the damage occurred to the date of the decision of the Commission or of the umpire, excepting the reserve in regard to the interest from the date of future decisions referred to above. This is the rule adopted recently in China by the "Commission des Indemnités."

The date of the presentation of the claim to the Venezuelan Government or to the Commission does not appear to the undersigned worthy of consideration, and not only because the forwarding of said claims to the legation was much delayed by the interruption in or temporary suspension of mail facilities of the Republic, but also because the legation did not deem it wise to call attention to these claims in times of political and financial crises, knowing well that there could not result practical utility or immediate solution.

It is known that for the claims of the period 1898–1900, none had as yet been obtained from the Venezuelan Government at the beginning of the current year and previous to the action of the allied powers.

What would it have profited the claimants and the legation to have hastened the presentation of the claims? It belongs to the Commission to provide therefor, and if the assembling of this latter could not be effected before the 1st of June, 1903, this fact should not influence the selection of a date from which interest should run in favor of the claimants.

This is not a case in which to invoke the rules governing ordinary courts and permanent tribunals, whose decisions, more or less solicited, depend solely on the diligence of the interested parties. We are in a question of claims and not in a jurisdiction absolutely exceptional, in which not only we may but we should depart from the usual forms of procedure.

Regarding the third point, assuming that local law may not according to the terms of the protocol of May 7 in all that concerns the settlement of Italian claims, it is clear that the Commission in order to determine the rate of interest to be awarded to Cervetti and other Italian claimants must base itself on equity and on precedents in similar cases, as well as on the usage of the country and of local commerce.

Though the Civil Code of Venezuela fixes the legal rate of interest at 3 per cent, it is notorious that is not the usual rate throughout the Republic. Instead, the conventional rate is 12 per cent, and the same is true of the rate of interest on deferred payment in commercial

affairs, and in this regard it is noteworthy that the Government exacts 12 per cent from importers that are backward in the payment of import duties.

The new law of the banks of Venezuela provides that on the falling due of hypothecated credits the banks may in case of delay exact 12 per cent per annum. According to articles 5 and 27 of the above-mentioned law, 7 per cent per annum is lawfully borne by hypothecated credits and 9 per cent for credits on 'change and mutuals.

The same local Government pays, as I am informed, to the Bank of Venezuela, as per contract, 9 per cent on its operations in current accounts.

The legal rate in Italy is 5 per cent in civil matters and 6 per cent in commercial affairs.

It has been seen above how in cases of arbitration interest has run from 5 per cent to 7 per cent per annum.

In asking, therefore, that in the case of Cervetti and the other claimants interest be fixed at 5 per cent, the Italian Commissioner does not doubt having adopted an equitable and moderate average and one fairly convenient to the Venezuelan Government.

ZULOAGA, *Commissioner:*

Respecting the principle, I have admitted that it appears proven that a damage caused by Venezuelan forces exists, but I do not find elements of conviction by which it may be estimated, the proof submitted being altogether deficient. The case has been submitted to the umpire, who is to render his decision freely thereon, based on proofs and such other evidence as he may deem proper to obtain and consider.

Respecting the second point raised by the Italian Commissioner, whether or not interest shall be allowed Cervetti, it is my opinion that interest should not be allowed, either for the past or for the future. Respecting the latter, it would appear that the Commissioner for Italy and myself are in accord that none should be granted, though it seems that he wishes to make certain reservations as to the decisions, in case, as he says, the nations interested should desire to fix the rate of interest.

This reservation is foreign to our attributes as judges and to the faculties invested in us by the treaties in virtue of which we were appointed. Judges decide, grant, or adjudicate that which they believe to be just, but they have not the power to make bargains.

Article V of the protocol of February 13, 1903, determines the manner in which Venezuela is to make the payment of claims within a reasonable time, and, as Italy accepted this mode of payment, Venezuela is within her rights, since payment is to be made to the Italian Government within the delay and in the manner agreed upon without concerning herself as to whether any particular claim is to be paid immediately or not.

It is to be observed that many delicate and laborious negotiations were had before the establishment of the 30 per cent agreed upon, in which, without doubt, the economic and political conditions of Venezuela were duly considered and appreciated by the powers agreeing upon a fixed mode of payment.

In regard to the payment of interest for time past, I am also of the opinion that it should not be granted. These claims, as appears in the case of Cervetti, do not come to the notice of the Government

before the moment in which they are presented to the Commission, and now is the time to fix the amount of the damages. It does not, therefore, appear just or equitable that interest should be awarded on amounts which Venezuela did not in reality know she owed.

Many nations, among them Italy and Venezuela, have decreed that legal interest (in Venezula, 3 per cent) does not accrue on debts for liquidated sums without a request on the debtor for same. This request is necessary, and is based on equity, as without it the debtor can not be supposed to know that interest is demanded. When it is a question of unliquidated sums it is impossible to establish the fact that interest has accrued, since the amount actually owed was not known.

This case of Cervetti appears singularly appropriate for the bringing out of this class of argumentation—for the development of its applicability. He has come before this tribunal, and the Commission has been unable to agree on an award for damages, for the want of satisfactory and convincing evidence. The case has passed to the umpire, who is equally unable to determine it, and is seeking further proof. Can it be said to be equitable, under such circumstances, to award the payment of interest by Venezuela for time past? Is it not puerile to award interest on sums which can only be approximated?

As these claims were not before brought to the knowledge of the Government of Venezuela, it seems strange to assume that interest is due on them. It is objected, however, that the royal Italian legation was prevented from presenting these claims to the Venezuelan Government by reasons of its being inconvenient, and therefore these very reasons would undoubtedly seem to prohibit the allowance of interest upon these claims.

I do not agree with the Italian Commissioner that the matter should be decided in general terms, though in fact this may be the result.

We are judges, and our proceedings should declare a judgment in each case. Naturally the decisions of the umpire will be accepted as determining the course of settlement by the Commission of future cases, but I believe, nevertheless, that we, as well as the umpire, should give special and full consideration in each case. That each case may or not be consequent on previous criteria is a question of a different nature.

Without any doubt, only well-founded reasons would determine a different procedure in any one case from that followed in others.

RALSTON, *Umpire:*

A difference of opinion arising between the Commissioners for Italy and Venezuela, this case was duly referred to the umpire.

Upon examining the record, it was the opinion of the umpire that, although the claim was probably well founded, the proof would not justify any recovery, the claimant's witnesses merely stating that the facts alleged by them were public and notorious, but stating nothing of their own knowledge. The foregoing view being submitted by the umpire to his associates, it was determined that the claimant himself should be summoned before the Commission and examined by its members under oath. This course was taken and the claimant appeared and was examined at length on June 25.

The claim is for the enforced loan of three horses (one being returned injured, and all, as appeared on examination, dying shortly after their

return because of bad treatment), and for the taking on July 29, 1902, of some fowls, household effects, gold and silver articles, and 250 pesos in coin, the acts complained of being committed by Venezuelan troops at Macuto under the command of a colonel, and by virtue of his express direction, the damage claimed being said to amount to 3,200 bolivars.

The fact of the taking, under the circumstances as stated by the claimant, has been demonstrated, and the only questions are as to the amount of damages and the interest thereon.

* * * * * * *

(After discussing the facts, the umpire continues:)

The taking having been without right, should interest be included in the award? If so, when should it begin and terminate, and what rate should be allowed? In the opinion of the umpire, some interest is justly due, the claimant having been deprived of the possession and use of his property and interest constituting some measure of return for such deprivation.

According to the general rule of the civil law, interest does not commence to run, except by virtue of an express contract, until by suitable action (notice) brought home to the defendant he has been "*mis en demeure.*" Approximately the same practice exists in appropriate cases in some jurisdictions controlled by the laws of England and the United States. If such be the rule in the case of individuals, for stronger reasons a like rule should obtain with relation to the claims against governments. For, in the absence of conventional relations suitably evidenced, governments may not be presumed to know, until a proper demand be made upon them, of the existence of claims which may have been created without the authorization of the central power, and even against its express instruction. So far is this principle carried that in the United States no interest whatever is allowed upon any claim against the Government except pursuant to express contract.

In view, however, of the conduct of past mixed commissions, the umpire believes such an extreme view should not be adopted. It has seemed fairer to make a certain allowance for interest, beginning its running, usually, at any rate, from the time of the presentation of the claim by the royal Italian legation to the Venezuelan Government[a] or to this Commission, whichever may be first, not excluding, however, the idea that circumstances may exist in particular cases justifying the granting of interest from the time of presentation by the claimant to the Venezuelan Government. This method of procedure will, in the opinion of the umpire, offer in international affairs the degree of justice presented by the "*mis en demeure*" as to disputes between individuals.

In opposition to the foregoing it is suggested in the opinion of the honorable Commissioner for Italy that the above rule would be unjust for the reason that the forwarding of claims was much delayed by the interruption in or temporary suspension of mail facilities, and because the legation did not deem it wise to call attention to these claims in times of political and financial crises, knowing well that no practical benefit or immediate arrangement would result therefrom.

As to the first of these suggestions, it is to be said that the present claimant has been able at all times to reach Caracas personally or by letter without any delay, and the situation of so many other claimants

[a] This principle was adopted in the case of the *Macedonian* against Chile by the King of the Belgians. (See 2 Moore's Arbitrations, p. 1466.)

has been the same that no general rule should be adopted based upon the condition of postal communications.

As to the further suggestion relating to the hesitancy of the royal Italian legation to submit claims, it can not be assumed that a nation which joins in creating a mixed commission to settle claims against it would have failed to recognize its just obligations when presented.

The umpire recognizes fully the fact that it may be a hardship to individual claimants not to receive interest from the date of taking; but, believing that this hardship could have been avoided in the manner before indicated, he does not now consider that it would be just to charge Venezuela with the payment of interest for perhaps long periods of time during which that Republic was not notified that a claim was made against it.

Next considering the question of the time when interest should terminate, the umpire is clearly of the opinion that no interest should be allowed upon the award finally to be made. In this conclusion he is influenced largely by the action of the Geneva tribunal, which granted no interest upon the award, and he is controlled by the fact that the protocols by virtue of which he acts do not provide for interest upon the awards. He believes, however, that under the powers contained in the protocols interest may in every case be calculated to a fixed period within the life of the Commission, this course placing all claimants upon a like footing. In the present claim, therefore, and in others like in general character where judgments are given for the claimants, interest may be calculated as a part of the award up to and including December 31, 1903, that being the date upon which the labors of the Commission might be presumed to terminate.

We now come to the final question as to the rate of interest to be allowed.

The umpire has been referred to the fact that commissions have allowed rates varying from 3 to 7 per cent and even more in some cases, while the commercial rate at Caracas often equals 12 per cent per annum, the latter rate being exacted by the Government on certain overdue taxes or imposts. Attention has further been called to the fact that the American Commissioners allowed against the recent Chinese indemnity 5 and 7 per cent.

The practice among prior mixed commissions has been so far from uniform and so often dependent upon the language of particular treaties as not to afford any very useful guide. Commercial rates are so uncertain that, while their consideration may be useful, the umpire would not be justified in being controlled by them. Of course, high percentages demanded by a Government from a defaulting taxpayer do not afford a safe precedent. Again, as to the Chinese indemnity, the rates were intended to operate simply between the United States and the claimant, and did not operate between nations.

The umpire believes it fair to take into special consideration the rate of interest paid in Venezuela by law in the absence of contract and also the rate accepted by foreign governments upon bonds given by Venezuela to pay obligations created by former arbitral tribunals.

It appears by article 1720 of the Civil Code of Venezuela that the legal rate is 3 per cent in the absence of contract, and the umpire is further informed, that although 5 per cent has been given in some cases, the rate upon bonds given by Venezuela in payment of awards in favor of French citizens and English and Spanish subjects is the

same. He thinks, therefore, that this rate should be followed in the absence of contract of the parties fixing another.

Pursuant to the foregoing opinion, judgment will be entered for 1,724 bolivars, plus interest at the rate of 3 per cent per annum from the date of the presentation of the claim to the Commission up to and including December 31, 1903.

POSTAL TREATY CASE.

The Commission, under the protocols, has no power to allow interest after the probable termination of its labors.
Claimants appearing before the Commission accept its limitations.

RALSTON, *Umpire:*

The Commissioners of Italy and Venezuela disagreeing on the question of the time for which interest should run on the above-mentioned claim, that question was duly referred to the umpire.

According to article 2, paragraph 33, of the Postal Treaty,[a] a government failing to pay charges, etc., for transportation due by it is, after six months' notice, chargeable with interest at the rate of 5 per cent per year. Interest at this rate is now asked till payment shall be made. The Venezuelan Commissioner admits interest should commence to run from July 1, 1900.

The rate and the time of commencement of interest are both fixed by the treaty, which is a contract determining absolutely the rights of the parties. However, as indicated in the Cervetti case, No. 9,[b] the Commission is without power to give interest to run beyond the time of the probable termination of its labors, and this principle extends, in the umpire's opinion, not alone to damage cases, but to cases arising under contracts.

It is to be borne in mind that claimants presenting themselves before this Commission appear before a body of limited powers, and are to be regarded as accepting its drawbacks in consideration of anticipated benefits. One possible drawback is the loss of interest after the termination of the Commission.

It is not the duty of the umpire to pass upon the justice of the claim for interest beyond the life of the Commission, and he does not do so, but solely upon the question of jurisdiction, and this decision, as well as the decision in the Cervetti case, is to be regarded as so limited.

---

[a] U. S. Statutes at Large, vol. 30, p. 1691.
[b] Page 658.

SAMBIAGGIO CASE.[a]

(By the Umpire:)

Revolutionists are not the agents of government and a natural responsibility does not exist.

Their acts are committed to destroy government and no one should be held responsible for the acts of an enemy attempting his life.

The revolutionists (in this case) were beyond governmental control and the government can not be held responsible for injuries committed by those who have escaped its restraint.

The word "injury" occurring in the protocol imports legal injury; that is, wrong inflicted on the sufferer and wrongdoing by the party to be charged.

As rules of interpretation the umpire accepts that: (*a*) If two meanings are admissible, that is to be preferred which is least for the advantage of the party for whose benefit a clause is inserted; (*b*) the sense which the acceptor of conditions attaches to them ought rather to be followed than that of the offerer; (*c*) two meanings being admissible, preference is given to that which the party proposing the clause knew at the time was held by the party accepting it; (*d*) doubtful stipulations should be interpreted in the least onerous sense for the party obligated; (*e*) conditions not expressed can not be invoked by the party who should have clearly expressed them.

Treaties are to be interpreted generally mutatis mutandis as statutes and, in the absence of express language, are not given a retroactive effect.

The "most-favored-nation" clause contained in the Italian treaty does not oblige this Commission to follow, in favor of Italian subjects, the interpretation made by other Commissions of their protocols.

Venezuela being recognized as a regular member of the family of nations, the universally accepted rules of international law must be applied to her and no intendment can be indulged in against her.

Under a treaty which (as in this case) authorizes the decision of questions before the Commission according to "justice" and "absolute equity," it is its duty to apply equitably to the various cases submitted the well-established principles of international law.

AGNOLI, *Commissioner* (claim referred to umpire):

That in favor of the Italian citizen, Salvatore Sambiaggio, resident of the parish of San Joaquín, who claims 5,135.50 bolivars on account of requisitions and forced loans exacted of him by revolutionary troops, an award be made of 4,591.50 bolivars (the claimant having adduced no proof whatever of a further loss of 544 bolivars, which he claims to have suffered), plus the interest thereon from the date of the loss to the date of the award, the following considerations are submitted in support of said request.

---

[a] The general subject involved in this opinion is discussed by Ch. Calvo, in Revue de Droit International, vol. 1 (1869), p. 417, and by Prof. L. de Bar in the same magazine, vol. 1 (second series, 1899), p. 464. See also Annuaire de l'Institut de Droit International, vol. 17 (1868), p. 96–137, and Ch. Wiesse's Le Droit International Appliqué aux Guerres Civiles. The subject herein considered is also discussed herein by the American-Venezuelan Commission, p. 7, the English-Venezuelan Commission, p. 344, the German-Venezuelan Commission, p. 526, the Netherlands-Venezuelan Commission, p. 896 and 903, the Spanish-Venezuelan Commission, p. 923, and by this Commission in the Guastini case, p. 730.

Baron Blanc, of Italy, wrote August 17, 1894, to the minister of Italy in Brazil:

"L'ingérence diplomatique ne doit pas être excessive. Le cas de dommages provenant d'actes qui, en violation du droit des gens, ont été commis par les autorités ou les agents dépendant du gouvernement contre lequel on réclame, est bien différent du cas des dommages qui ont d'autres origines, comme seraient ceux occasionés par des operations de guerre ordinaires, ou par des actes provenant de révolutionaires, ou de malfaiteurs de droit commun.

"Quant aux premiers il n'y a pas doute que l'État ne doive en être tenu pour responsable; mais quant aux seconds, il manque toute base rationnelle d'une responsabilité gouvernementelle, à moins que le gouvernement ou ses agents n'aient, d'une manière evidente, omis de remplir leurs propres devoirs en ce qui concerne la possibilité de prévenir le dommage dont on se plaint." So says Rev. Gen. de Droit International Public, 1897, p. 406.

The Commission has before it the question as to whether the Venezuelan Government is materially responsible to the claimant, Sambiaggio, and other Italians established in Venezuela, on account of damages inflicted upon them by revolutionary authorities or troops. The Italian Commissioner holds that such responsibility exists when, as in the case under consideration, the said authorities exercise a de facto power or when the said troops have a recognized military organization for the purpose of overthrowing the legal government, though the damage alleged may have been inflicted by detached bodies of troops (guerrillas), and that, on the contrary, such responsibility may be excluded when it is shown that such acts are committed by marauders who style themselves revolutionists solely that they may with impunity prosecute their nefarious calling.

This opinion is based upon the following heads:

1. The rights common to all Italians in Venezuela, and to claimants and Sambiaggio in particular, under the terms of the treaty between Italy and Venezuela and of the Washington protocols.

2. The general principles of international law, special legislation, and precedent arbitral decisions in cases analogous to the one under discussion; and

3. Considerations of fact and principles of equity.

As to the first head: In the protocol of February 13, 1903 (Art. I), Venezuela recognizes in principle the justice of the claims presented by His Majesty's Government in the name of Italian subjects, and has besides admitted (Art. IV) that all claims, excepting only those of the first rank (Art. III), may be examined by a mixed commission which, with regard to damages to person or property or to unjustifiable taking, simply establish the truth of the facts and decide the amount of the award.

What is the meaning, the true reason, of these two dispositions, and more particularly of the first?

The meaning, the true reason, is that the Venezuelan Government recognized at Washington its responsibility for acts of revolutionists resulting in damages to Italian subjects; otherwise it would have formulated a special reservation.

Was it, indeed, at all necessary that the Venezuelan Government recognize damages inflicted by its authorities or agents?

Certainly not. The Government has never thought to deny such responsibility, and to specially insist thereon in the first clause of the Washington protocol, one which animates the whole, in order to reassert a principle which has never been questioned, would have been puerile. The justice of Italian claims for indemnity on account of acts of the revolutionists is what was sought to be established—a justice which Italy has always *in principle* upheld and which the Venezuelan Government has always *in principle* denied.

The consequences of this divergence in ideas are what were sought to be eliminated. There has never been any question as to the other point.

The first article of the protocol of February 13 and the above-quoted portion of the third not having, therefore, been created with a view to claims for damages inflicted by the Government or its agents, and it being unreasonable to suppose that they were called into being for no specific and well-defined purpose, it follows that they must undoubtedly refer to claims styled "revolutionary."

The Commissioner for Venezuela urges, however, that had these claims been in view, explicit mention of them would have been made; to which the Commissioner for Italy observes, as before, that even though special reference to them has not been made, it is equally true that no reservation or exclusion was stipulated in regard thereto, and insists that his interpretation of the articles mentioned is the only logical one that may be given.

In this connection it is worthy of note that the German-Venezuelan protocol drawn up for similar causes, under identical conditions and having the same scope as ours, contemplates claims originating in the existing "civil war" in Venezuela, and the French-Venezuelan treaty of the 19th of February, 1902, relative to claims of French citizens against the Venezuelan Republic, considers "damages suffered from the fact of insurrectional events."

The "civil war" in Venezuela, in which the revolutionary troops have never been recognized as belligerents, and "the insurrectional events" are nothing more nor less than the revolution, and the damages inflicted by it on German and French subjects will be passed upon by the respective Commissions; indeed, the French-Venezuelan Commission has already decided that such losses must be indemnified.

Under the international treaty of July 19, 1861, Italy is guaranteed the treatment accorded the most favored nation. A broad interpretation has been given by Article VIII of the protocol of February last to articles 4 and 26 of the said treaty, according to which Italians in Venezuela and Venezuelans in Italy shall in all matters, and particularly in the matter of claims, enjoy the rights accorded by the above-mentioned clause. Now, as has been stated, the French-Venezuelan Mixed Commission has recognized the principle of the responsibility of the local government for damages caused French subjects by the revolutionists, according to the provisions of the treaty of Paris of 1902. The Italians have therefore right to similar consideration.

The Washington protocol contains (Art. VIII), however, another important clause, that which provides that the Italian-Venezuelan treaty may not in any case be invoked as against the provisions of the protocol. It may, however, be invoked in favor of the treaty, since it contains no provision contrary thereto, and the Commissioner for Italy accordingly so invokes in favor of the claimant Sambiaggio, as he will for other claimants whose cases are analogous to the one under consideration, the clause relative to the most favored nation.

But why was it agreed at Washington that the Italian-Venezuelan treaty could not be invoked against the provisions of the protocol?

A careful study of these two diplomatic documents will clearly show an intention that article 4 of the treaty should not be invoked as against the protocol, according to which treaty only damages inflicted by the constituted authorities of the country could have given rise to claims for indemnity. What other motive could there have been (and we must assume there was a motive) for the stipulation of Article VIII of the protocol?

It was evidently the intention that all, absolutely all, the claims arising from civil war in Venezuela should be examined and adjudicated ex bono et æquo by the Commission; and if such was the intention, it could not have been contemplated that those arising from revolutionary acts should be thrown out on the raising of a technical objection

such as was advanced by the Commissioner for Venezuela in the present case of Sambiaggio, an exception which, even if founded in equity, should not, under the terms of the protocol, be admitted.

The protection and security of person and property which the Venezuelan Government explicitly guarantees by article 4 of the treaty of 1861 to Italians residing in Venezuela would be a mockery did it not include indemnity for injuries inflicted on Italian subjects by the frequent revolutions, against the abuses of which so far no adequate steps have been taken, either preventive or repressive. From the sole fact that Venezuela does not sufficiently and for long periods protect the persons and property of Italians resident in her territory, and has failed of fulfilling the obligations imposed on her by article 4 of the treaty of 1861, there arises the right to claim compensation for damages. (Bluntschli, art. 462.)

This is no new and exceptional theory. The very recent decision of the French-Venezuelan Commission has already been referred to, but there are many others. Mr. Robert Bunch, the English minister at Bogotá and umpire in the claims of the United States *v.* Colombia in the case of the steamer *Montijo*,[a] stated in his decision that:

> It was, in the opinion of the undersigned, the clear duty of the President of Panama, acting as the constitutional agent of the Government of the union, to recover the *Montijo* from the revolutionists and return her to her owner. It is true that he had not the means of doing so, there being at hand no naval or military force of Colombia sufficient for such a purpose; but this absence of power does not remove the obligation. The first duty of every government is to make itself respected both at home and abroad.
>
> Protection is promised to those whom the Government has consented to admit to its territory, and means must be found to render said protection effective. If the Government fails therein, even though it be through no fault of its own, it must make the only reparation in its power—i. e., it must indemnify the injured party.[b]

The United States demanded and obtained by arbitral decision of March, 1895, an indemnity for the seizure of the North American vessels *Hero*, *San Fernando*, and *Nutrias*, for the unlawful arrest of United States citizens, and for other damages inflicted by the legal Government and by revolutionists. (Moore, Hist. and Dig. of International Arbitrations, etc., pp. 1723, 1724.) The same theory was sustained by the United States *v.* Peru, which on that occasion obtained an indemnity of $19,000 in favor of an American citizen, Dr. Charles Easton, for material damages and maltreatment inflicted on him by a body of partisans of a rebel chieftain seeking to overthrow the constitutional Government of Peru. (Moore, pp. 1629, 1630.)

In the case of the "Panama riot and other claims" was recognized the "liability, arising out of its privilege and obligation, to preserve peace and good order along the transit route," of the Government of New Granada, now the State of Colombia, which, in that decision, was obliged to pay an indemnity for the damages inflicted by revolutionists. (Moore, pp. 1361 et seq.)

---

[a] Moore, p. 1444.

[b] The exact language of the umpire in this case was as follows:

> If it promises protection to those whom it consents to admit into its territory, it must find the means of making it effective. If it does not do so, even if by no fault of its own, it must make the only amends in its power, viz, compensate the sufferer.

Fiore, a noted authority on international law and a writer of most liberal views (chap. 4, sec. 660), says:

> A state may be declared responsible for acts committed on its territory, even by private individuals, if injury to a state or to strangers results therefrom.

and in section 666, same chapter, he says:

> Let us assume that a government has failed to take proper steps to obviate certain disturbances. * * * In these and similar cases justice and equity require that the state be held to an account and compelled to pay the damages.

In a treatise by the same author (chap. 4, sec. 672) is found this maxim, which deserves the special attention of the Commission, as it synthetizes all the present argumentation:

> The question of the responsibility of a state is, therefore, a complex one, and requires for its solution not only the principles of law but an investigation of the facts and an appreciation of the circumstances.

If, therefore, in this matter international law does not establish fixed maxims, but follows different and at times contradictory decisions, it is because such questions, when submitted, were solved according to equity.

Now, the Commissioner for Italy believes he is justified in asserting in all confidence that in the case of the Venezuelan revolutions equity demands that the interests of the claimants injured by revolutions be not neglected.

Grave indeed would be the responsibility assumed by the Commission if it decided to the contrary, especially from the point of view of the discouragement of immigration to Venezuela.

Was it not from considerations of equity that France, on the occasion of the massacre at Aigues-Mortes of a number of Italian operatives by French citizens, indemnified the families of the murdered, and that Italy, under similar conditions, indemnified resident French merchants who had suffered damages from an outburst of popular indignation aroused by the above-mentioned massacre?

And was it not perhaps the same decisions in equity that inspired existing laws in Germany and other European states, according to which municipalities are held to the indemnification of peaceful citizens in cases of mob violence and revolutions?

But, setting aside all reference to the foregoing precedents, it surely would not be just to establish an absolute parallel between the treatment that may be demanded in favor of foreigners in cases of mob violence and revolutions in countries where the administrative and military organization is complete and where acts of rebellion against constituted authority are an exception and may be considered as unfortunate accidents, and that which may be invoked in others where revolution is a frequent and persistent political phenomenon.

From a condition of fact essentially different arises a situation which has peculiar and distinctive characteristics, and upon this is based the question of responsibility, and thence the obligation to grant indemnity.

Requisitions and forced loans exacted from foreigners by the military or administrative authority *à main armée*, and often with threat, are not merely abuses, but constitute crimes which the Government of Venezuela is of its own motion and by the requirements of its internal laws bound to visit upon the offenders without awaiting report or denunciation from the injured parties. This it has not as yet done,

except in rare instances, and then more from a policy of political order than from any desire to punish the perpetrators of illegal acts.

It is true there have been frequent confiscations of property from revolutionary leaders, but it is not shown that the product of such confiscation has ever been applied to the indemnification of the injured citizens or foreigners.

If this is always the attitude of the Government of Venezuela, it is because such requisitions and forced loans are by it considered as political acts incident to general condition of the country, and being morally responsible for the consequences, it should be held to a material responsibility therefor.

That such is the light in which such acts are viewed by the Government is shown by the amnesty granted to those revolutionists who lay down their arms and become reconciled, without any provisions whatever for the restitution of property unlawfully taken by them. It is true that restitution is not made to natives more than to foreigners, but this does not invalidate the principle of right, and it is logical that these latter should invoke diplomatic intervention, which, as well as the protection of local laws, they have an undoubted right to claim. The one in no wise excludes the other, and in this they are on a parity with Venezuelans residing in Italy or other foreign country.

It is not sought to place in doubt the sincere desire of the Venezuelan Government to maintain political order; but judging from the results it must be admitted that the means employed by it for so doing are, to say the least, inefficient, and from this its responsibility is deduced as a logical sequence, and this is the better established in cases where revolutionists have taken property from and maltreated foreigners within the observation of Government authorities or troops who encouraged them thereto.

The Commissioner for Italy can not possibly distinguish in any manner between damages caused by the acts of successful revolutionists and of those who failed in their attempt.

Success is an accident, and in no respect argues the worth of the cause fought for, the only moral element which could possibly justify a difference in the treatment of those who had been injured by a successful party and those who had been despoiled by an unsuccessful one.

It would be necessary to prove that the revolution broke out in defense of a high humanitarian principle or in vindication of a great political or social idea in order to prove the presence of this moral element.

The struggle between those in power and those seeking to overthrow it has no monopoly of this characteristic, and triumph depends generally upon the force of arms, the skill and foresight of commanders, as well as on other accidental circumstances.

It would, besides, furnish to foreigners a strong incentive for violating the laws of neutrality to make the distinction above mentioned, as in such a case it would be to their interest to side with one or the other faction, and to render more apparent the absurdity of the distinction they would be inclined to side with their despoilers, since with the success of these latter would lie their own chance for securing future compensation for their losses.

And even admitting the principle of such distinction, would we not thereby enter into a very labyrinth of difficulties in cases of sufficient

frequency where this or that group of contestants passes from the side of the revolutionists to that of the Government, and vice versa? For example, in which category should be classed the damages caused by General Hernandez, who initiated the last successful revolution, then withdrew therefrom, and now is again reconciled with it?

The Government should be stimulated in the adoption of energetic means whereby to establish order in all the provinces of the Republic now in the hands of the revolutionists, and to maintain peace in the future by holding to the principle of its responsibility in case of claims for damages caused by this same revolution.

It should likewise be considered that on each success of the revolutionists there is established a government de facto, which collects taxes and imposes duties and in various other ways harasses both natives and foreigners.

During the last political crisis there have been several provincial governments which have exercised several, if not all, of the functions of a legal government, and as the sums collected by them can not be demanded from them it is to the Government we must look for redress, as it is the only body with which diplomatic relations may be held with regard thereto. It would be unjust that the property of foreigners should be converted without adequate compensation, to the profit of the country, and there would be danger in conceding that future revolutions might with impunity exist at the expense of foreigners.

These latter may not take part in local politics, and if the principle that they are entitled to compensation for damages inflicted by revolutionists be rejected they will be in a worse position than the natives, as they will have no means of or right to armed defense, and at the same time no one will be held responsible for damages suffered by them from revolutionists.

It has already been remarked that several localities of the Republic are in the hands of the revolutionists. Let it once be known in those localities that it has been decided that the damages inflicted on foreigners there can not be made subject to indemnity and in what a critical position will not those foreigners be placed? What possible guaranty will there be for them against further aggressions?

The political situation in Venezuela has certain special characteristics which the Commission should duly consider in judging of the consequences from the point of view of the claimants and of the compensation. The Commission is not specially called to decide questions of international law, except as it may do so incidentally. Its principal duty is the consideration of facts from the standpoint of moderation and absolute equity, and to compensate in a reasonable degree the Italians who have been injured from the abnormal political situation of the country, planting itself on the provisions of the Washington protocol, which do not distinguish between damages caused by revolutionists, whether triumphant or not, and those caused by the Government, and holding in view the fact that the Venezuelan plenipotentiary has recognized in principle and without reservation or discrimination the justice of claims which the Commission is called upon to decide.

Resting upon these considerations of law, and especially of fact, the Italian Commissioner insists that the claim of Salvatore Sambiaggio be admitted and the Venezuelan Government be held responsible in the sum of 4,591.50 bolivars, with the interest accruing thereon.

P. S.—The Italian Commissioner asks in addition that there be taken

in consideration and decided the later claim for damages in the sum of 171.63 bolivars, this day presented by the royal Italian legation, to whom the claimant Sambiaggio transmitted it after having forwarded the claim already submitted to the Commission.

ZULOAGA, *Commissioner:*

It is a generally accepted principle of international law that strangers can not expect, in any country, better treatment than is accorded the nationals. Were this otherwise foreign immigration, instead of being a source of prosperity and grandeur, might become, to quote from Nesselrode's celebrated note, a true lash for the natives.

A foreigner who takes up his domicile in a country can not expect more than the justice of that country, more than the laws of that country, more security than it offers, or more than its civilization and well-being will afford him; in a word, more than the political organization of the place in which he lives will give him. This order of ideas is so founded on the condition of society and on absolute equity that to insist thereon seems superfluous.

The foreigner who comes to this part of America knows and implicitly accepts the fact that here at times society is politically perturbed, just as he knows that its soil is subject to upheavals which may engulf its inhabitants; just as he knows that fever lurks in every bush and pool of its exuberant nature. But if these are its drawbacks, there are also its compensations and advantages. Here life is easier than it is in the great European aggregations, and here fortune is more readily achieved. It would be absurd to pretend that all societies offer equal security and benefits, and hence to expect from each the same grade of civilization.

If this is true, it must be equally true that each government, as such, should be responsible for its acts, in that it constitutes a juridical entity, endowed with rights and duties.

The principle of the responsibility of governments is not otherwise founded, in the opinion of law writers, than on the rule of civil law that each individual is responsible for the acts of himself and his subordinates. (Authorities, articles 1116 of the Venezuelan and 1151 of the Italian code.) In private life the matter of responsibility is easily determined; but not so with the state. The motives which impel the action of the latter are many and various; and when, from whatsoever cause, political society is deeply stirred, it may be necessary for the state to adopt extraordinary, though entirely rational, measures for the reestablishment of order and safety. Numerous are the reasons for a state's action in such case, and the canons of civil law can not apply to it save in a restricted sense.

These premises once established, it seems to me quite possible to appreciate the true meaning of Article III of the Washington protocol. Venezuela holds (art. 9 of the law of 1873, Seijas, Vol. I, p. 57), that the nation can not be considered responsible for damages, injuries, or expropriations not committed by the constituted authorities operating in a *public capacity*. The responsibility of the Government is therefore limited by and dependent on proof that the acts for which indemnity is claimed have been committed by the authorities while in the discharge of their public functions.

The protocol seems to have desired to avoid these discussions, and

the Government admits, in principle, its responsibility; but only in so far as its agents are concerned; not for the acts of individuals—i. e., revolutionists—as that would be an extension of responsibility not contemplated by law, which is not supposable in a public treaty, or juridically deducible, as, according to the fundamental rule of interpretation, every exceptional clause is to be taken *restrictively*.

Governments, according to the authorities, are not responsible for the acts of individuals in rebellion, precisely because they are in rebellion. (Seijas, Vol. I, p. 50.) A government would be responsible, in the concrete, where it had been negligent in the protection of individuals; but in such case the responsibility would arise from the fact that the government, by its conduct, had laid itself open to the charge of complicity in the injury. The acts of revolutionists are outside of the government.

It is not sufficient for a state to prove that it has been injured by individuals residing in another state to entitle it to hold this latter responsible and exact indemnity from it. It is necessary to prove that the prejudicial act is morally chargeable to the state, which ought to or could have prevented it, and has voluntarily neglected to do so. (Fiore, Vol. I, p. 582, sec. 673, Rule g.)

These are the principles which I find applicable to revolutionists when their political character is clearly demonstrable, as in the case of regular forces who follow a definite political purpose. In regard to guerrillas, the question appears to me even more simple. These are, generally speaking, men who take advantage of the disturbed state of the country to commit depredations. They are often individuals who seek to satisfy passion or to wreak a personal or local vengeance. Others, again, are simply robbers who operate as such under the guise of revolutionists. We have had in this Commission the case of a band of robbers operating on the road to La Guaira, and calling themselves revolutionists. To hold the state responsible for the acts of such individuals would be impossible, as they would naturally come under the jurisdiction of criminal courts, in common with bandits of any country.

Regarding violations of private property, there exists in the law of 1873 (see Seijas, Vol. I, p. 57) the following provisions:

ART. XI. All persons who unofficially order contributions or forced loans or any act of plunder whatsoever, shall equally with the perpetrators, be held personally and directly responsible to the injured parties.

For cases occurring in war coming before the Commission there has been no amnesty, so that the question is not presented. But in my opinion, even supposing a case in which amnesty has covered everything (which has not been the case), the Government would not be responsible if in its judgment such action had been dictated by motives of high public policy.

It is erroneous to assert that Venezuela covers with the shield of amnesty the acts of violence committed by revolutionists against individuals. Only political amnesty has been granted, following the policy usual in such cases, and it is generally so stated in the decrees issued.

The honorable Commissioner for Italy invokes in support of his argument Article I of the Washington treaty. I do not believe that this article has any such meaning, and even less before a tribunal of jurists called upon to decide questions of absolute equity. This article refers only to claims already presented by Italy, and this article of the

treaty, given the condition under which it was signed by Venezuela, was simply a means of ending the blockade. Venezuela was compelled to subscribe to the payment of claims the justice of which she denied, and even to admit that they were just. *Quod scripsi, scripsi.* True, but even Italy, by the mouth of one of her greatest geniuses, has taught the world how much value may attach to a confession wrung by force, and his "*E pur si muove*" is to-day in the mouths of Venezuelans. Article I of the Washington treaty has, I repeat it, no meaning which may strengthen the claims last presented, as it can not be conceived that that which is unknown may be declared just.

The interpretation given by the honorable Commissioner for Italy to the third article of the Washington protocol would give a marked preference in favor of Italian subjects over the claims of the subjects of other countries who are equally entitled to a share in the 30 per cent set apart for the settlement of all claims. If such radical difference had in fact existed the other nations would not have failed to note it.

Article 462 of Bluntschli's Codification of International Law, invoked by the honorable Commissioner for Italy in support of his contention that as Venezuela had not fulfilled her obligation toward Italy the latter nation could claim indemnity for damages, is in my opinion, wrongfully appealed to. It is not true that Venezuela has violated its treaty obligations with the former country. Article 4 of said treaty does not and could not offer to Italians more protection than is afforded Venezuelans, and as in case of revolution or internecine war the Italians only have a right to be indemnified for injuries inflicted upon them by the constituted authorities on the same terms as those granted by existing law to Nationals, Italy can not say that Venezuela has treated Italians less favorably than her own citizens. Article 4 claims no more than this, and it can not be pretended that more protection is due Italians than is accorded Venezuelans. This article anticipates the case of Italians injured in internecine war, and provides that they shall be treated the same as Venezuelans. As the Washington treaty confers an advantage on Italians over Venezuelans in that it creates this Commission, before which they may appear without the necessity of previously having recourse to the tribunals of the country, and provides for the payment of their claims in gold out of the 30 per cent, the protocol takes care to state that the treaty of 1861 may not be invoked. This is the only object of the article referred to, and nowhere in it does it appear that there was any wish to consider the question of the responsibility for the acts of revolutionists. Neither does it appear, so far as I can see, that the "most-favored-nation" clause of the treaty of 1861 gives Italy the right to claim damages for such acts. It does not appear that any such agreement was made with any power, and if any reference is made therein to claims for damages arising in insurrectionary events, it is without doubt to such as are caused by the acts of the Government or governmental authorities.

To take as precedents the decisions of a mixed commission as though they were the clauses of a treaty is an error. A mixed commission gives its decision in each case and with especial reference to all its circumstances. If, therefore, such decisions were regarded as having the force and effect of a treaty, giving to Italy the right to an advantage equal to the decision in any one identical case, it would be neces-

sary to accord to the decisions in favor of Venezuela corresponding advantages. That is to say, decisions in favor of Venezuela in other commissions would be invoked by her in her favor and against Italy in this Commission. This would lead to the absurdity of submitting this tribunal to the decisions of all the mixed commissions.

The "most-favored-nation" clause referred to by the honorable Commissioner for Italy is absolutely inapplicable in this Commission and has no relevancy.

The decisions of this Commission are not governed by any rule other than that established by Article II of the Washington protocol; that is to say, they will be based on absolute equity, without regard to objections of a technical nature or the provisions of local legislation. This absolute equity is what is understood by the Commissioners to be such, and in the event of their disagreeing the decision of the umpire will be final.

Equity seems to me to be nothing more than the natural application of those rules of reason and justice which nations recognize as surest and which international law recommends in cases submitted for consideration. This is a tribunal of full and absolute jurisdiction and one which has no need to occupy itself with the decisions of other mixed commissions, which may or may not rest on equity, according to the principles governing and applicable only in each case. Furthermore, this tribunal may not be held subject to the precedent of an anterior decision, but is obliged to apply the principles of equity in each case, and if, for an unforeseen cause, a decision has been, in our judgment, incorrect, it is our duty not to perpetuate the error so committed. This is the rule of action of every tribunal.

The cases which the honorable Commissioner for Italy cites in support of his contention (the vessels *Montijo v.* Colombia, *Hero* and *San Fernando v.* Venezuela, and Easton *v.* Peru) do not seem to me to serve as precedents. In the two first, which refer to the seizure of vessels, there is a mingling of juridical questions which complicate and obscure the cases and render them quite distinct in principle from a simple case of injury to the property of a foreigner domiciled in this country. In the case of Easton *v.* Peru that country agreed with the United States to pay the sum awarded, but Moore assigns no ground for such agreement.

Fiore, the authority quoted by the honorable Commissioner for Italy, holds in his writings opinions which, when taken in sequence, support the position taken by me in this case. As quoted, the extracts cited do not correctly render the opinions of that learned writer, who maintains that a state may be held responsible if its system of laws is so grossly imperfect as to be evidently unfit for proper administration. The laws of Venezuela—penal, civil, and of procedure—have been inspired by those of Italy, and in so far as concerns the general order of their principles there is but little disparity between them. It would be difficult for Italy, according to equity and the principles laid down by Fiore, to cast imputations of inefficiency on Venezuela in this respect. The responsibility of a government is in proportion to its ability to avoid an evil. A government sufficiently powerful in all its attributes to prevent the occurrence of evil, but by negligence permitting it, is doubtless more accountable for the preservation of order than one not so endowed. It is on this basis that Fiore determines

the responsibility of a government to be in direct ratio to its ability to foresee and avoid danger.

A few final considerations and I have done.

This Commission has not, in my opinion, the right to enter into a general discussion as to the merits of the policy of the Venezuelan Government. That would be an act of intervention into its national life not warranted by the principles of international law. Venezuela is a sovereign state, recognized as such by all civilized nations, and is not accountable to any foreign power concerning the motives of its political action.

We here are simply acting as judges in the settlement of claims for damages, according to the merits and circumstances of each individual case—nothing more—and I repel the observations of the honorable Commissioner respecting the general policy and administration of the affairs of this country. Venezuela is a member of the family of nations according to the principles of international law, and admitted as such without question. I can not therefore see that there is any necessity for the discussion of this matter. Venezuela, though occupying a very modest position among the civilized powers, may say, in spite of her recent political misfortunes, that her people have a right to consideration as a cultured people for whom there is a brilliant and promising future. Her history is inferior to that of none of the South American states. To four of them her armies have given independence and furnished statesmen. From her soil have sprung Americans who may well be called eminent. Her institutions, though not as yet fully developed, as they surely will be in time, are most generous and liberal and progressive. She enjoys to the fullest degree liberty of conscience, of religion, of thought, and of education. On her shores the stranger enjoys the same measure of civil rights as does the native. Surely a country in which such conditions exist is entitled to consideration and esteem, and should not be judged by the standard of accidental occasions of political perturbations in which damage to property is suffered. Were so ignoble a criterion to be adopted in our estimate of nations, more than one now held in high regard in Europe would appear far otherwise.

Force of circumstances has drawn us into a general discussion of national responsibility for revolutionary acts, but the truth is that such principles are not needed except as the circumstances of each particular case may require.

This should be the procedure of judges, more especially of judges sitting in equity.

In accordance with the ideas expressed by me in the foregoing, I feel constrained to reject and deny the claim of Salvatore Sambiaggio.

ZULOAGA, *Commissioner* (supplementary opinion):

The government is not responsible to individuals for damages caused by factions, revolutions, or mobs in any manner against the constituted authority. It is true that the government should confer protection and security, but only in so far as is permitted by the means at its disposal and according as the circumstances may be verified. So many and so various are the causes which may render a government more or less culpable that it would be impossible to formulate a general idea on the subject. Moreover, so complicated are the circumstances that

the solution of this problem in a perturbed state of society is a question of political tact which few statesmen are capable of settling.

There are times when the use of extreme energy and implacable repression may be a great error, serving only to feed the fires of the insurrection.

Revolutions are not here, more than elsewhere, always occasioned by the faults or errors of the government or by a simple spirit of uprising among the revolted. They obey multiple causes, and not infrequently there is in the political horizon of a people a condensation of revolutionary clouds that the patriotism of the best citizens of the government or of the opposition is unable to prevent, so deeply is the reason hidden in political or economical causes.

Europe itself, so proud of the internal peace which its states have succeeded in preserving during the latter half of the past century, sees with alarm, in spite of the strength of the organization of its governments, the swelling of the socialistic forces and the affiliation therewith of the working masses.

Governments are constituted to *afford* protection, not to *guarantee* it, and it is out of the question that this tribunal should assume to investigate the causes of injury from the general standpoint of interior policy, without running the risk of undertaking to judge not merely the cases of claims for damages submitted to it, but also the very government and country itself, which would be an act of interference wholly unwarranted by the principles recognized by all countries.

It has, however, been maintained by various governments and authorities that in certain particular cases and under certain circumstances thereof a state might properly be charged with responsibility for damages to an individual, in the event of its being demonstrated that the state had been wholly negligent in furnishing the protection which could be reasonably expected from it. In accordance with this theory the government is not responsible for lack of protection not resulting from a culpable neglect so great as to equal an act of its own against private property.

Whosoever, therefore, makes claim against the state in such case must establish two things—

1. That he has actually suffered the damage alleged.
2. That the state is in a certain manner responsible, through its negligence, for the damage committed.

This is the doctrine laid down by Fiore:[a]

> It is not sufficient for a state to prove that it has suffered a damage from the acts of individuals residing in another state to charge the latter with responsibility and exact a reparation. It must be proved that the prejudicial act is morally imputable to the said state, or that it could or should have prevented the injury and was voluntarily negligent of its duty in not having done so.

This is nothing more than the application of common law that the burden of proof rests on the plaintiff.

In the application of these principles of indirect responsibility it is necessary to take into account that the government of a country in a state of war meets with graver difficulties and problems than it does in a state of peace; that the means at its command and its especial attention are preferably directed to the reestablishment of order, and that its responsibility is in direct ratio to its ability for so doing.

---

[a] See Vol. I, sec. 673, p. 582.

Speaking of neutrality, Fiore says:[a]

> The inability of a neutral state to prevent the violation of the laws of neutrality *always* excludes the liability of the government, and consequently the right of the belligerent to consider the neutral state responsible for said violation.

Now, if this rule is so clearly expressed in regard to neutrality, in which the obligations of neutral governments are in a certain way direct, what shall we say when it is a case coming within the internal life of a state?

This principle of the responsibility of a state by reason of its negligence is moderated, however, by that which holds that foreigners can not in any territory expect to receive more than is accorded the nationals, and according to the law of Venezuela the state is not responsible for the acts of revolutionists.

Setting aside all discussion as to principles of international law, to which we were brought by the necessity of understanding the meaning of certain statements in the Washington protocol, and keeping strictly within the principle of absolute equity, I would ask, Is it equitable that foreigners domiciled in Venezuela should expect to escape the political condition of the country, and obtain, as an advantage over the natives, not only payment for damages inflicted on them by the Government, but for those caused by the rebels the Government was combatting, and against whom it was expending all its energies, blood, and treasure? Is it equitable that, as between a Venezuelan and a foreigner, the former should say, "My home is in mourning for cherished members of my family who have perished in defense of the state; I myself am ruined from the enforced neglect of my business; I have been the victim of the enemy;" while the foreigner may say, "I have lost nothing by the war; I am as safe as in times of peace; not only does the government (which I do not defend) pay me for the losses which it has inflicted on me but for those occasioned by its enemies as well."

I believe that in equity such claims should be rejected.

RALSTON, *Umpire:*

The Commissioners for Italy and Venezuela differing as to the right of recovery in the above-mentioned case, the same was duly referred to the umpire for decision under the protocol.

The claimant, Salvatore Sambiaggio, a resident of San Joaquín Parish, State of Carabobo, demands the sum of 5,133.52 bolivars for forced advances made to, property taken by, and damages suffered from revolutionary forces under command of Colonel Guevara on or about July 27, 1902, with the additional amount of 171.63 bolivars for costs and interests.

The immediate and most important question presented is as to the liability of the existing government for losses and damages suffered at the hands of revolutionists who failed of success.

Let us treat the matter first from the standpoint of abstract right, reserving examination of precedents, the treaties between the two countries, and the question whether there be anything to exempt Venezuela from the operation of such general rule as may be found to exist.

We may premise that the case now under consideration is not one where a state has fallen into anarchy, or the administration of law has

---

[a] See sec. 1569.

been nerveless or inefficient, or the government has failed to grant to a foreigner the protection afforded citizens, or measures within the power of the government have not been taken to protect those under its jurisdiction from the acts of revolutionists; but simply where there exists open, flagrant, bloody, and determined war.

The ordinary rule is that a government, like an individual, is only to be held responsible for the acts of its agents or for acts the responsibility for which is expressly assumed by it. To apply another doctrine, save under certain exceptional circumstances incident to the peculiar position occupied by a government toward those subject to its power, would be unnatural and illogical.

But, speaking broadly, are revolutionists and government so related that as between them a general exception should exist to the foregoing apparently axiomatic principle?

The interest of a government, like that of an individual, lies in its preservation. The presumed interests of revolutionists lie in the destruction of the existing government and the substitution of another of different personnel or controlled by different principles.

To say that a government is (as it naturally must be) responsible for the acts it commits in an attempt (for instance) to maintain its own existence, and to require it at the same moment to pay for the powder and ball expended and the soldiers engaged in an attempt to destroy its life, is a proposition difficult to maintain, and yet it is to this point we arrive in the last analysis if governments are to compensate wrongs done by their would-be slayers when engaged in attempts to destroy them.

A further consideration may be added. Governments are responsible, as a general principle, for the acts of those they control. But the very existence of a flagrant revolution presupposes that a certain set of men have gone temporarily or permanently beyond the power of the authorities; and unless it clearly appear that the government has failed to use promptly and with appropriate force its constituted authority, it can not reasonably be said that it should be responsible for a condition of affairs created without its volition. When we bear in mind that for six months previous to the taking complained of in the present case a bloody and determined revolution demanding the entire resources of the Government to quell it had been raging throughout the larger part of Venezuela, it can not be determined generally that there was such neglect on the part of the Government as to charge it with the offenses of the revolutionists whose acts are now in question.

We find ourselves therefore obliged to conclude, from the standpoint of general principle, that, save under the exceptional circumstances indicated, the Government should not be held responsible for the acts of revolutionists because—

1. Revolutionists are not the agents of government, and a natural responsibility does not exist.

2. Their acts are committed to destroy the government, and no one should be held responsible for the acts of an enemy attempting his life.

3. The revolutionists were beyond governmental control, and the Government can not be held responsible for injuries committed by those who have escaped its restraint.

Let us now discuss the decisions of courts and commissions relative to the question at issue.

The case of Prats *v.* The United States was presented before the American and Mexican Mixed Commission of 1868, and was for the destruction of a brig by the Confederate forces during the American civil war.

> Nonresponsibility on the part of the United States, [said Mr. Wadsworth, speaking for the Commission], for injuries by the Confederate enemy within the territories of that Government to aliens did not result from the recognition of the belligerency of the rebel enemy by the stranger's sovereign. *It resulted from the fact of belligerency itself* and whether recognized or not by other governments. * * * The naked question therefore remains: Is the United States responsible for injuries committed during the late civil war within the arena of the struggle by the armed forces of the so-called Confederate States to the property of aliens, transient or dwelling? We have no difficulty in answering that question in the negative.
>
> * * * * * * *
>
> The principle of nonresponsibility for acts of rebel enemies in time of civil war rests upon the ground that the latter have withdrawn themselves by force of arms from the control and jurisdiction of the sovereign, putting it out of his power, so long as they make their resistance effectual, to extend his protection within the hostile territory to either strangers or his own subjects, between whom, in this respect, no inequality of rights can justly be asserted. (Moore's Digest, Vol. 3, pp. 2886–2892.)

As will appear by reference to Moore, Volume 3, page 2900, the same Commission followed this rule in various cases like in principle.

The United States was not held liable to foreigners for contracts entered into between them and the Confederate States during the civil war. (Moore, Vol. 3, pp. 2900–2901.)

A somewhat like principle was invoked when the American and Mexican Claims Commission of 1868 refused to hold Mexico responsible for the acts of the Maximilian government which was striving to accomplish its overthrow. (Moore, Vol. 3, p. 2902.)

The case of Daniel N. Pope was presented before the American and Mexican Claims Commission of 1859 for damages inflicted by a sudden insurrectionary movement which was soon quelled by the authorities. Mexico was not held responsible. (Moore, Vol. 3, p. 2972.)

So losses inflicted upon a foreigner by a government not recognized as de facto were not recompensed. (Schultz *v.* Mexico, American and Mexican Claims Commission of 1868, Moore, Vol. 3, p. 2973.)

In the Cummings case, before the same Commission, the umpire, Sir Edward Thornton, held that if the parties inflicting the damage were rebels, the Government was not responsible for the loss. (Moore, Vol. 3, p. 2977.)

In the case of Walsh, for imprisonment by rebels, the same umpire held that the Mexican Government could not be held liable. (Moore, Vol. 3, p. 2978.)

Like principles to these laid down in the foregoing cases were followed in the cases of Wyman and Silva. (Moore, Vol. 3, pp. 2978, 2979.)

The case of Divine (Moore, Vol. 3, p. 2980) is notable in that the American agent contended that Mexico should be held responsible as she had pardoned the revolutionist and had conferred high office upon him; but the umpire held that

> other governments, including that of the United States, have pardoned rebels, but they have not on this account engaged to reimburse to private individuals the losses caused by those rebels,

and dismissed the claim.

Still other commissions have followed the same rule. In the case of McGrady et al. *v.* Spain (Spanish and American Commission of 1871), a claim merely setting up wrongs and injuries committed by insurgents was dismissed. (Moore, Vol. 3, p. 2981. See to like effect Zaldivar *v.* Spain, Moore, Vol. 3, p. 2982.)

Before the American and British Claims Commission of 1871 was heard the oft-cited case of Hanna, for destruction of cotton by the Confederate forces during the American civil war. After thorough discussion, the Commission unanimously held—

that the United States can not be held liable for injuries caused by the acts of rebels over whom they could exercise no control and which acts they had no power to prevent. (Moore, Vol. 3, p. 2982.)

The same principle was followed in the cases of Laurie and others (Moore, Vol. 3, p. 2987) and Stewart (p. 2989).

The last Commission to consider the point under discussion and decide thereon was the Spanish Treaty Claims Commission, formed by act of the American Congress dated March 2, 1901.[a]

The treaty of December 10, 1898, between the United States and Spain[b] provided that "The United States will adjudicate and settle the claims of its citizens against Spain and relinquished in this article," and to render effective this provision the Commission was constituted.

The article referred to released all claims that had arisen in favor of the nationals of either country against the other "since the beginning of the late insurrection in Cuba."

After the most thorough discussion of the question now before the umpire and the most ample consideration by the Commission it was decided by a majority—the minority apparently not dissenting from the statement of principle, but regarding it as abstract or qualified by certain treaty stipulations or other matters not in point here—that—[c]

2. Although the late insurrection in Cuba assumed great magnitude and lasted for more than three years, yet belligerent rights were never granted to the insurgents by Spain or the United States so as to create a state of war in the international sense, which exempted the parent government from liability to foreigners for the acts of the insurgents.

3. But where an armed insurrection has gone beyond the control of the parent government the general rule is that such government is not responsible for damages done to foreigners by the insurgents.

4. This Commission will take judicial notice that the insurrection in Cuba, which resulted in intervention by the United States, and in war between Spain and the United States, passed from the first beyond the control of Spain, and so continued until such intervention and war took place.

If, however, it be alleged and proved in any particular case before this Commission that the Spanish authorities, by the exercise of due diligence, might have prevented the damages done, Spain will be held liable in that case.

We may now consider the opinion of public men and international law writers.

Without discussing in detail the expressions of American Secretaries of State, in the opinion of the umpire they are correctly summarized in the head notes of section 223 of Wharton's Digest of International Law, as follows:

A sovereign is not ordinarily responsible to alien residents for injuries they receive on his territory from belligerent action, or from insurgents whom he could not control or whom the claimant government had recognized as belligerents.

---

[a] Stats. at L., vol. 31, p. 1011.
[b] Art. 7, Stats. at L., vol. 30, p. 1754.
[c] Opinion No. 8.

Says Hall, in his work on International Law, page 231:

When a government is temporarily unable to control the acts of private persons within its dominions, owing to insurrection or civil commotion, it is not responsible for injury which may be received by foreign subjects in their person or property in the course of the struggle, either through the measures which it may be obliged to take for the recovery of its authority or through acts done by the part of the population which has broken loose from control. When strangers enter a state they must be prepared for the risks of intestine war, because the occurrence is one over which, from the nature of the case, the government can have no control, and they can not demand compensation for losses or injuries received, both because, unless it can be shown that a state is not reasonably well ordered, it is not bound to do more for foreigners than for its own subjects, and no government compensates its subjects for losses or injuries suffered in the course of civil commotions, and because the highest interests of the state itself are too deeply involved in the avoidance of such commotions to allow the supposition to be entertained that they have been caused by carelessness on its part which would affect it with responsibility towards a foreign state.

In a note to the foregoing he remarks that during the American civil war the British Government refused to procure compensation for injuries inflicted by the United States forces on British subjects, remitting them to American courts for such remedies as were open to American citizens.

While the exact point at issue is not discussed by Bluntschli, he approaches it when he says (see sec. 380, bis):

Par contre, les États ne sont tenus d'accorder d'indemnités pour les pertes ou les dommages subis par les étrangers aussi bien que par les nationaux à la suite de troubles intérieurs ou de guerre civile.

The British minister at Bogotá, on August 23, 1887, wrote, with relation to claims for destruction of property at Panama in 1887, as follows:

From the information obtained by Her Majesty's Government it is clear that the destruction of Colon was entirely due to the action of the insurgents who had declared themselves against the Government, and who, having succeeded in obtaining for a short period complete possession of and mastery over that town, proceeded to set fire to it in several places; nor does it appear to be open to question that at the time when these events occurred the Colombian Government was entirely powerless to prevent, although they eventually succeeded in quelling, the rebellion.

In these circumstances there is not, in the opinion of Her Majesty's Government, sufficient ground for contending that the destruction of Colon was so directly due to any default on the part of the Colombian Government as to justify a demand for compensation on behalf of those British subjects who, like yourself, have unfortunately incurred losses through the fire. (U. S. Senate Doc. 264, 57th Cong., 1st sess., p. 163.)

Whether the assumptions of fact contained in the foregoing are correct or not the statements of law may be accepted as a summary of the British position.

We may appropriately quote Escriche, who describes a fortuitous case for which no responsibility exists, as follows:

Caso fortuito es el suceso inopinado, ó la fuerza mayor, que no se puede preveer ni resistir. Tales son las inondaciones, torrentes, naufragios, incendios, rayos, violencias, *sediciones populares*, ruinas de edificios causadas por alguna desgracia imprevista, y otros acontecimientos semejantes.

According to Seijas, Volume III, page 538:

El gobierno inglés, como el ruso, el francés, el italiano y el espagñol, han proclamado y sostenido la irresponsabilidad del estado por perjuicios ocasionados á extrangeros por tropas revolucionarias, y aún por las constitucionales, quando el daño no ha sido voluntario y deliberadamente causado.

While M. Despagnet does not more than touch the subject in his "Droit International Public," he says (p. 353):

Mais les étrangers peuvent souffrir un préjudice à la suite d'une guerre, d'une révolution, ou d'une émeute éclatant dans le pays où ils se trouvent; il est universellement admis aujourd'hui que la protection diplomatique ou consulaire ne peut être invoquée en pareil cas, parcequ'il s'agit d'un accident de force majeure, dont les étrangers courent le risque absolument comme les nationaux du pays. Ce serait, d'ailleurs, trop restreindre la liberté d'action des belligérants ou du gouvernement qui combat les insurgés que de les obliger à respecter les biens et les personnes des étrangers, alors surtout qu'il est souvent impossible de les distinguer dans une lutte violente.

Calvo remarks (sec. 86) that:

Les étrangers établis dans un pays en proie à la guerre civile et auxquels cet état de choses a occasionné des préjudices n'ont eux-mêmes aucun droit à des indemnités, à moins qu'il ne soit positivement établi que le gouvernement territorial avait le moyen de les protéger et qu'il a négligé d'en user pour les mettre à l'abri de tout dommage. Ces principes ont dans plus d'une circonstance été reconnus explicitement par les gouvernements d'Europe et d'Amérique.

To support the above statement he cites Grotius, book 2, chapter 25, section 8; Vattel, book 2, chapter 4, section 56; Wheaton, Part I, chapter 2, section 7; Kent, Volume I, sections 23 et seq.; Twiss, section 21; Rutherford, Institutes, book 2, chapter 9; Puffendorf, book 8, chapter 6, section 14; Bynkerschoek, book 2, chapter 3; Wildman, Volume I, pages 51, 57, 58; Halleck, chapter 3, section 20; Martens, sections 79–82; Lawrence, Part I, chapter 2, section 7; Pinheiro Ferreira, Volume II, pages 5 et seq.; Lawrence's Wheaton, note 16; Dana's Wheaton, note 15; Hall, pages 27–30.

In the work of J. Tchernoff, entitled "Protection des Nationaux Résidant à l'Étranger," page 337, the question is touched upon as follows:

On se trouve en présence d'insurgés qui ne sont pas reconnus. Ils commettent des acts qui d'une part sont accomplis en violation des lois de la guerre, et d'autre part sont de nature à causer des dommages aux sujets neutres. On ne peut parler de la responsabilité internationale des insurgés puisqu'ils n'existent pas pour le droit international public. Nous savons, nous venons de dire pourquoi, on ne peut rendre responsable de leurs actes le gouvernement légal.

Certain cases have been or might be cited contrary, or presumed to be contrary, to the enunciations of principle already indulged in by the umpire. They should be enumerated.

The first mentioned by the honorable Commissioner for Italy is the Montijo case, cited in 2 Moore, pages 1421 et seq. In this case the steamer *Montijo* was taken possession of by State revolutionists. After a short career they surrendered to the regularly constituted authorities of the State, which, according to the opinion of Umpire Sir Robert Bunce, granted them amnesty and stipulated as one of the conditions of peace that the State would pay for the use of the vessel. This contract, the umpire held, bound the Colombian Government. He went further, and in addition held that the Government had failed to perform its duty in that it had not recovered the *Montijo* and returned her to her owners, following with some general observations as to the duties of governments, which, however well meant, were not necessary to the decision of the case and not discussed by the parties. That the final result was correct is not doubted.

The next citation made by the honorable arbitrator for Italy is of the Venezuela Steam Transportation Company against Venezuela. Unfortunately, the grounds of the decision are not stated in the award.

We learn from the agent's report (p. 11) that among the contentions of the United States were the following:

1. That the seizure, detention and employment of the three steamers of complainant and the imprisonment of its officers * * * was—

(*a*) An invasion of the rights of the complainant in derogation of principles of international law; (*b*) was contrary to equity and justice; (*c*) and was in violation of the special privileges conferred by Venezuela upon the complainant under provisions of the act of Congress of May 14, 1869.

2. That by reason of the invasion of these rights and privileges Venezuela was internationally liable and is bound to indemnify complainant pecuniarily to the extent of the damage proven.

Considering the multiplicity of contentions advanced on behalf of the United States and the absence of reasoning in the decision, it is impossible to say on what principle the case was decided, although it is fair to remark that it might be inferred from the dissenting opinion of Commissioner Andrade that the case affords support for the theory of the honorable Commissioner for Italy.

Reference is next made to the case of Easton and others, supported by the United States, against Peru. As appears by the report in Moore, page 1629, the injuries complained of were inflicted by revolutionists, and a claim therefor presented before the United States and Peruvian Claims Commission. The question of Peru's liability for acts of revolutionists seems not to have been discussed, the Commissioners simply disagreeing as to the amount of the award, and the case going to the umpire, whose opinion is not given. Whether there were or not circumstances withdrawing the case from the usual rule does not appear.

The honorable arbitrator for Italy next cites the Panama riot claims (2 Moore, pp. 1361 et seq.); but it seems clear that the citation is not in point, these claims having grown out of an assault in which the police themselves took part, and the Government being held liable for failure of its officers to do their duty, nothing approaching the present revolutionary question appearing.

The opinion of the honorable Commissioner for Italy invites attention to Bluntschli, article 462, and Fiore, sections 645, 651, and 657.

Bluntschli, in the article indicated, lays down conditions which would justify forcible interference by one state in the affairs of another; but the present situation does not seem to be such as to make his words applicable.

The positions taken by Fiore may be regarded as being in direct accord with the theory of the present decision. Furthermore, we may accept, as, in fact, has already been accepted, in principle, the words of Fiore (sec. 656), when he says:

Non é facile stabilire regole astratte per determinare quando la mancanza di diligenza per parte di un governo nel calcolare le conseguenze possibili e previdibili del proprio sistema di leggi e di procedure, posse costituire una omissione voluntaria, o tale da rendere lo Stato responsabile. Tutto dipende dal rapporto tra il dovere astratto dello Stato e le circostanze di fatto, e tra il pericolo del danno e la previdibilità.

La diligenza colla quale un governo deve provedere a che siano rispettati i doveri internazionali dovrà certamente essere maggiore quando per la forza degli avvenimenti siano posti in giuoco molti interessi, quando la società internazionale sia agitata, quando il pericolo che accadano fatti a danno di un Stato amico, sia maggiore. Di maniera che la solerzia colla quale dev' essere tenuto un governo é in ragione diretta delle circostanze che rendono più o meno imminente ed il danno che si puó provvedere ché i terzi possono soffrire; la sua responsabilitá effetiva poi in ragione diretta del dovere di essere solerte dei mezzi dei quali poteva disporro, e dei quali si e servito per allontanare il pericolo. (See Fiore, Droit Int. Privé, Antoine's ed., sec. 671.)

There is, however, the broad difference hereinafter pointed out between indulgence in a settled presumption, on the one hand, and an investigation of the facts and appreciation of the circumstances in each case.

It is suggested, in the opinion of the honorable Commissioner for Italy, among other things, first, that the Italian protocols impliedly recognize the obligation of Venezuela to pay for injuries committed by revolutionary troops; and, second, that under a proper reading of Article VIII of the protocol of February 13, bearing in mind that France and Venezuela, by the protocol of February 19, 1902, had expressly recognized damages arising from "insurrectionary events," and that the German protocol refers to claims resulting from the present Venezuelan civil war, Italy, under the "most favored nation" clause appearing in such article of her protocol, is entitled to be paid for injuries inflicted upon her subjects, and of the nature above indicated.

To fully understand these contentions a recital of the facts with relation to the diplomatic situation between Italy and Venezuela seems essential.

By article 4 of the treaty between the two nations, dated June 19, 1861, it was provided, among other things, as follows:

ART. 4. The citizens and subjects of one state shall enjoy in the territory of the other the fullest measure of protection and security of person and property, and shall have in this respect the same rights and privileges accorded to the nationals, and shall be subject to the conditions imposed on the latter. * * *

In cases of revolution or internecine war the citizens and subjects of the contracting parties shall have the right, in the territory of the other, to be indemnified for loss or damage to person or property inflicted by the constituted authority in the same measure as would, under similar circumstances, be granted nationals according to the laws which are or may be in vigor.

Article 26 provides:

It is agreed between the high contracting parties that in addition to the foregoing stipulations the diplomatic and consular agents, all citizens, vessels, and merchandise of each state, respectively, shall enjoy the full right in the other to the franchises, privileges, or immunities accorded the most favored nations, gratuitously if the concession has been gratuitous, and on similar terms if the concession was a conditional one.

Discussions, the nature of which will be alluded to hereafter, arising between the two countries, by Article VIII of the protocol of February 12, 1903, it was provided as follows:

ART. VIII. The treaty of amity, commerce, and navigation between Italy and Venezuela of June 19, 1861, is renewed and confirmed. It is, however, expressly agreed between the two governments that the interpretation to be given to articles 4 and 26 is the following:

"According to article 4, Italians in Venezuela and Venezuelans in Italy can not in any case receive a treatment less favorable than the natives, and according to article 26, Italians in Venezuela and Venezuelans in Italy are entitled to receive in every matter, and especially in the matter of claims, the treatment of the most favored nation, as is established in the same article 26."

If there is any doubt or conflict between the two articles, the article 26 will be followed.

It is further specially agreed that the above treaty shall never be invoked in any case against the provisions of the present protocol.

Article IV of the present protocol reads as follows:

ART. IV. The Italian and Venezuelan Governments agree that all the remaining Italian claims, without exception, other than those dealt with in Article VII hereof, shall, unless otherwise satisfied, be referred to a Mixed Commission, to be constituted as soon as possible in the manner defined in Article VI of the protocol, and which

shall examine the claims and decide upon the amount to be awarded in satisfaction of each claim.

The Venezuelan Government admit their liability in cases where the claim is for injury to persons and property, and for wrongful seizure of the latter, and consequently the questions which the Mixed Commission will have to decide in such cases will only be:

(*a*) Whether the injury took place or whether the seizure was wrongful; and,

(*b*) If so, what amount of compensation is due.

In other cases the claims will be referred to the Mixed Commission without reservation.

It is evident that the protocol last mentioned does not directly recognize any obligation on the part of Venezuela to pay for injuries inflicted by revolutionary troops, and the first question is whether it does so by implication. It seems clear that under the treaty of 1861 revolutionary claims could not have been entertained, for the obligation recognized by Italy and Venezuela reciprocally was to indemnify for the loss or damage inflicted by the constituted authority of the country, and then only in the same measure as nationals would be.

Consequent upon the revolutionary events of 1896 to 1900, injuries inflicted upon Italian citizens were the subject of the diplomatic discussion between the countries. A careful examination of the correspondence shows that it did not relate to the questions of liability or nonliability for the acts of revolutionists, but rather to the power of Venezuela under its decree of February 14, 1873, republished January 24, 1901, to remit Italians and other foreigners to the local authorities for relief. Bearing in mind the fact that the only treaty obligations then existing was to indemnify against injury by the constituted authorities of the country we can readily understand why it was that in the diplomatic correspondence, as stated, no reference whatever exists to the question of liability for damages from acts of unsuccessful revolutionists, and none of the Italian claims submitted to the Venezuelan foreign office were for such injuries.

The article does not in itself refer to any specific classes of acts, and a natural and logical interpretation would be that it charged Venezuela with the fullest responsibility for the acts of her authorities of whatever nature, legal or otherwise, or other acts for which she might be responsible from the standpoint of international law, not for the acts of those over whom she had no control. This interpretation would not necessarily render the words meaningless or superfluous when we remember that at the time they were written there existed in full force the law of February 14, 1873, which provided only a limited responsibility, as follows:

ART. 9. En ningún caso podrá pretender que la Nación ni los Estados indemnicen daños, perjuicios, ó expropiaciones, que no se hubieron ejecutado per autoridades legítimas, obrando en su carácter público.

Article 14 of the constitution of Venezuela of April, 1901, contains the foregoing provision, but with the words applying it "tanto los nacionales como los extrangeros," while article 13 provides:

ART. 13. Los extrangeros gozan de todos los derechos civiles que gozan los nacionales. Por tanto, la Nación no tiene ni reconoce á favor de los extrangeros ningunas otras obligaciones ni responsabilidad que las que á favor de los nacionales se hayan establicido en igual caso en la constitución y en las leyes.

Venezuela, in addition, denied in principle the right of a foreigner to present any claims save before her own forums, and permitted that only for a limited time. About these points alone the discussion

between the two Governments turned. It is therefore inconceivable that Venezuela by the protocol should have admitted liability for a large class of claims never contended for by Italy, her admission so naturally relating to a liability denied by both laws and constitution.

An interpretation which would extend the liability of Venezuela under her admission to acts of revolutionists would enlarge its limits to include any liability, no matter how generally denied by internationalists, and whether the damages were the result of private wrongs or unexpected brigandage, were committed by a power invading Venezuela or were the effect of an accident in the international sense as applied to war; in every case must Venezuela pay—a conclusion manifestly impossible. In the umpire's opinion, there must properly be the premise always understood that the claim is of a nature to create liability under international law—in other words, it must be for a legal injury. (See Webster's Dictionary, title Injury.)

Let us accept for a moment the interpretation insisted upon by Italy and see the result. Venezuela would be bound not alone for her own acts, but generally for all acts—bound for the acts of those seeking to destroy constituted government as well as to defend it; bound for every claim of damage the royal Italian legation might see fit to present. She would be held to have abandoned the usual position of a contracting party and to have consented to place herself within the judgment of those claiming against her, leaving only the amount of the claim to be determined. The Commission would no longer determine whether the (legal) injury took place, for all claimed offenses, no matter by whom committed, would constitute injuries in the eyes of the Commission. To indulge in such supposition is to imagine that the representative of Venezuela had abandoned reason when the protocol was signed, and an interpretation according common sense to both parties signing a contract should always be sought.

Let us for a moment analyze the language of the protocol in view of the facts. Venezuela had for a long time by her constitution and laws denied her liability for certain classes of acts, and denied that she was responsible anywhere save in her own courts.

By the protocol she admitted liability for injury to persons and property and wrongful seizure of the latter, and remitted to a mixed commission the questions (*a*) whether the injury took place, and (*b*), if so, what amount of compensation is due. In aid of the sense we may presume that the word "injury," when last used, includes injury to person and property and wrongful seizures.

It has already been pointed out that "injury" imports a damage inflicted against law. It involves a wrong inflicted on the sufferer and of necessity wrongdoing by the party to be charged, as otherwise it could not be called "wrongful" as against him. Applying this doctrine, which the umpire believes to be unassailable, by what process of ratiocination can he imply to Venezuela the wrongful intent lodged in the bosoms of those who were at enmity with her and seeking to destroy her established Government? And if he may not do so, how can he charge Venezuela with the commission of acts of which she is innocent? And how, under such circumstances, can he find that an injury has been committed with which, by the law of nations, she should be so charged?

If it be argued that she has admitted liability for the acts of another, and therefore she should pay, is it not to be remarked that a promise

to pay for the acts of one's enemy engaged in an attempt upon one's own life is so far contrary to the usual practice of mankind that it is only to be believed upon the most direct and express evidence, and beyond all dispute this evidence is lacking.

But even if the case were not clear, as it seems to be, applying the usual rules of law, and bearing in mind the tendencies of human nature, what are we taught as the canons of interpretation in such cases?

Woolsey's International Law, section 113, gives as one of the most important rules of interpretation:

> 2. If two meanings are admissible, that is to be preferred which is least for the advantage of the party for whose benefit a clause is inserted. For in securing a benefit he ought to express himself clearly. The sense which the acceptor of conditions attaches to them ought rather to be followed than that of the offerer.

Wharton's Digest, section 133, expresses a like idea in these terms:

> If two meanings are admissible, that is to be preferred which the party proposing the clause knew at the time to be that which was held by party accepting it.

In the same sense says Pradier-Fodéré (section 1188):

> Les auteurs modernes reconnaissent que * * * les stipulations douteuses doivent être interpretées dans le sens le moins onéreux pour la partie obligée.

Vattel expresses himself (sec. 264, Tome II) as follows:

> Si celui qui pouvait et devait s'expliquer nettement et pleinement ne l'a pas fait, tant pis pour lui; il ne peut être reçu à apporter subséquemment des restrictions qu'il n'a pas exprimées.

Summing up the foregoing, the umpire thinks that if it had been the contract between Italy and Venezuela, understood and consented to by both, that the latter should be held for the acts of revolutionists—something in derogation of the general principles of international law—this agreement would naturally have found direct expression in the protocol itself and would not have been left to doubtful interpretation.

As above indicated, it is strongly urged, in connection with Article VIII of the protocol, that because of the presence of the "most-favored nation" clause the umpire should give to Italy all the advantages which might be claimed by Germany and France by virtue of the protocols made with those powers.

At first glance the suggestion would appear to be well founded; but a careful study of the article will, in the umpire's opinion, prove the argument erroneous.

At the time the protocol was signed relations between Italy and Venezuela were so far broken that, as shown by the language of the article, it was necessary to "renew and confirm" the old treaty.[a]

Italy then asked and obtained a special interpretation of the treaty of 1861 with her. If this interpretation is to be given a retroactive effect, and if it is to be considered as applying in favor of Italy, all the provisions of other protocols recently signed, then a resort to such instruments is necessary in every case to learn the furthest bounds of the powers of this Commission. Unless both elements concur we need not refer to them.

---

[a] It will be noted that the permanent court of arbitration at The Hague, sitting in the Venezuelan case, found that the blockade resulted in war between Great Britain, Germany, and Italy on the one hand and Venezuela on the other. (Appendix, p. 1058.)

Has, therefore, this new interpretation of articles 4 and 26 of the old treaty any retroactive effect? If it has not, the rights of Italian subjects and the duties of the Venezuelan Government are fixed by treaty or international law as of the date of the occurrence complained of, but modified by such provisions of the protocol as do not form part of the treaty of 1861 as now interpreted.

Treaties are to be interpreted, generally, mutatis mutandis, as are statutes (Wharton's Digest, sec. 133), and on many occasions the Supreme Court of the United States has held that in the absence of express language statutes will not be held to be retroactive. In one of the most recent cases brought before that tribunal it was held that—

> a statute should not be construed to act retroactively, or to affect contracts entered into prior to its passage, unless its language be so clear as to admit of no other construction. (City R. Co. *v.* Citizens' Street R. Co., 166 U. S., 557.)

The case now before us, as above indicated, is substantially that of a treaty "renewed and confirmed," with a new interpretation as to claims, but not in terms relating back to past conditions or justifying the umpire in believing that new obligations as to past events had been called into existence by its signing.

This belief is borne out by the fact that the signers of the protocol did not think that this renewed treaty related back, for if they had done so they would not have concluded the article with the words:

> It is further specially agreed that the above treaty shall never be invoked in any case against the provisions of the present protocol.

If the treaty, as newly interpreted, had, in the signers' opinion, related back, these words would have been unnecessary, for, giving full force to the interpretation as relating to an earlier date, there would have been nothing for Italy to fear. If the treaty uninterpreted could have been invoked, save for the presence of the words in the protocol, there was reason to believe that its Article IV, above cited, would have defeated many Italian claims.

Article VIII, though found within a temporary protocol, is in fact part of a renewed treaty and relates necessarily to the treatment to be accorded citizens and subjects by general and permanent rules between nations, and not to momentary rules of decision controlling the disposition of claims arising out of past events. Rules for the settlement of prior disputes, which die with the Commission acting under them, accord nothing partaking of "favored-nation" treatment; for, to illustrate, suppose Venezuela had said in a protocol with Switzerland ten years ago that to settle by arbitration a dispute affecting a single individual she had admitted her liability for the acts of robbers, could that admission now be invoked by Italy as against Venezuela? Is the case stronger or the rule different because France, for instance, has now a a hundred or more claimants? Must the umpire examine the records of every past commission to be sure that Italy is receiving "favored-nation" treatment before him?

If the idea presented by the honorable Commissioner for Italy were to prevail, would not inextricable confusion result? Must the umpire of the Italian-Venezuelan Commission withhold his decision on a particular case until another commission decide it, and follow the views then expressed? If he decide a certain proposition against Italy, and any other commission thereafter give a more favorable decision, must he, in subsequent cases, abandon his opinions despite his solemn declara-

tion at the formation of this Commission, or must he insist upon them, notwithstanding that the Commission primarily charged with the interpretation of the other protocol be of a different opinion?

The umpire concludes that the interpretation of the old treaty in Article VIII of the protocol has no retroactive effect and no reference to the pending arbitrations.

The umpire has discussed the foregoing as if the French and German protocols might give superior rights to those granted to Italy, but expresses no opinion on this point.

It is strongly insisted on behalf of the claimant that whatever may be the general rule of international law with respect to the nonliability of governments for the acts of revolutionists, this rule does not find a proper field of operation in Venezuela, the country being subject to frequent revolutions.

It is true that an exception such as is indicated has on various occasions been maintained by the United States and several European nations in their dealings with certain Central and South American states. But the exception can not be said to have become a settled feature of international law, not having been accepted by the nations against which it was enforced, and being repudiated by some international writers (Calvo, sec. 1278) and perhaps squarely accepted by none.

Attorney-General Cushing, a lawyer of deserved eminence in international affairs, remarked nearly fifty years ago (2 Moore, p. 1631):

> Great Britain, France, and the United States had each occasionally assumed in behalf of their subjects or citizens in those countries (South American) rights of interference which neither of them would tolerate at home—in some cases from necessity, in others with questionable discretion or justification. In some cases such interference had greatly aggravated the evils of misgovernment. Considerations of expediency concurred with all sound ideas of public law to indicate the propriety of a return to more reserve in this matter as between the Spanish-American republics and the United States, and of abstaining from applying to them any rule of public law which the United States would not admit in respect of itself.

To take the position, as is asked, that Venezuela is in the regard under discussion an exception to the general rule we must have the right to decide, and must actually decide, that Venezuela does not occupy the same position among nations as is occupied by nations contracting with her. Is this justifiable?

For about seventy years Venezuela has been a regular member of the family of nations. Treaties have been signed with her on a basis of absolute equality. Her envoys have been received by all the nations of the earth with the respect due their rank.

The umpire entered upon the exercise of his functions with the equal consent of Italy and Venezuela and by virtue of protocols signed by them in the same sovereign capacity. To one as to the other he owes respect and consideration.

Can he therefore find as a judicial fact, even inferentially (the protocol not authorizing it in express terms), that one is civilized, orderly, and subject only to the rules of international law, while the other is revolutionary, nerveless, and of ill report among nations, and moving on a lower international plane?

It is his deliberate opinion that as between two nations through whose joint action he exercises his functions he can indulge in no presumption which could be regarded as lowering to either. He is bound to assume equality of position and equality of right.

The umpire is the more confirmed in this opinion because of the fact that at the time of the happening of many of the offenses committed by revolutionists upon which claims against Mexico before the several commissions were founded, Mexico was experiencing internal disorders and revolutions certainly not less marked than those from which Venezuela had suffered within the past five years. Nevertheless Mexico was not charged with responsibility.

While the umpire considers the rule of action above indicated as that which must control him, he does not ignore the fact that the existence of the protocol implies that Venezuela may have failed in her duties in the light of international law in certain instances, and that as to such cases his powers as an umpire may be called into play. But in his mind there is a broad difference between indulgence in a general presumption of inferior status and the acceptance of proof of wrongdoing in particular instances.

The umpire therefore accepts the rule that if in any case of reclamation submitted to him it is alleged and proved that Venezuelan authorities failed to exercise due diligence to prevent damages from being inflicted by revolutionists, that country should be held responsible. In the present instance no such want of diligence is alleged and proved.

It is suggested that a decision holding Venezuela not responsible for the acts of revolutionists would tend to encourage them to seize the property of foreigners. This appeal is of a political character and does not address itself to the umpire.

It is further urged that absolute equity should control the decisions of the Commission and that equitably sufferers from the acts of revolutionists should be recompensed. But this subject may be viewed from two standpoints. It is as inequitable to charge a government for wrongs it never committed as it would be to deny rights to a claimant for a technical reason.

In the view of the umpire, the true interpretation of the protocol requires the present tribunal, disregarding technicalities, to apply equitably to the various cases submitted the well-established principles of justice, not permitting sympathy for suffering to bring about a disregard for law.

The umpire will close the discussion by quoting upon this point from Mérignhac's Traité d'Arbitrage, section 305:

> Cet usage est assez fréquent entre particuliers (permitting to the arbitrator absolute liberty of decision). Grotius en parlait déjà et ne voyait aucune bonne raison de le prohiber au regard des parties ayant une confiance absolue en l'arbitre (conf. art. 1019 du code de procédure civile français). Dans ce cas aucune règle ne s'impose, en principe, à l'arbitre international, et il est libre de statuer "suivant sa conscience personnelle." Nous estimons, cependant, qu'on ne saurait trop lui recommander de se conformer, toutes les fois qu'il le pourra, aux solutions du droit international, mitigé, le cas échéant, par l'équité, comme nous l'avons dit. En agissant autrement il risquerait souvent de faire fausse route, car, si grandes que soient son autorité et son expérience personnelles, elles ne peuvent évidemment aboutir à des déductions aussi sûres que celles qui ont été approuvées par une longue pratique internationale et l'usage constant des peuples civilisés. Il faut ranger dans la classe des compromis, laissant toute liberté à l'arbitre, ceux qui lui permettent de juger suivant la justice et l'équité; cette formule vague aboutit en effet à lui laisser une liberté absolue.

Governed by what he regards as the clear teachings of international law, the umpire will sign a judgment dismissing the case.

In conclusion, the umpire desires to express his appreciation of the industry and learning displayed on behalf of Italy and Venezuela in the preparation of the case.

MAZZEI CASE.

Venezuela ultimately receiving property originally taken by revolutionists, equitably should pay therefor.

RALSTON, *Umpire:*

The honorable Commissioners for Italy and Venezuela disagreeing as to the above-entitled claim, it was referred to the umpire.

The facts of the claim are somewhat obscure in certain particulars, because the appropriate dates are not always given, but the following is believed to be a correct statement:

On November 16, 1899, Generals Leopoldo and Victor Bautista, of the Government forces, took from the claimant a horse and some other animals, which the claimant valued at 16,000 bolivars, but which are not valued in the testimony, or their number given, save that the claimant refers to "two superior jacks" and the witnesses to "burros" or "animals." The horse taken was returned.

On January 18, 1900, revolutionary forces took merchandise and animals. We may dismiss further mention of this taking, as it comes within the rule laid down in the Sambiaggio case.[a]

On October 12, 1901, factional forces under command of General Briceño and Col. Nicolás Geres took 30 mules valued at 624 bolivars each, or a total of 18,720 bolivars. These forces being shortly thereafter defeated, the mules were taken possession of by the Government and not returned to the claimant.

With regard to the taking of November 16, 1899, the number of animals taken does not clearly appear. The umpire is limited to the smallest number given, the "two superior jacks." The valuation of 250 bolivars, in the absence of specific evidence, may be placed upon them.

As to the taking of October 12, 1901, while the claimant was in the first place a sufferer at the hands of the revolutionists, nevertheless, the property taken finally fell into the hands of the Government and was retained by it. Having, therefore, received the benefit of the claimant's animals, the umpire believes it entirely equitable that the Government should pay therefor.

A judgment will therefore be entered for the sum of 18,970 bolivars plus interest from the date of the presentation of the claim to December 31, 1903.

DE ZEO CASE.

A claim founded upon supposed wrongful acts attributed to minor public officers should be clear and definite in its statements and proof and show unavailing appeal to superior authority to justify recovery against a State.[b]

RALSTON, *Umpire:*

The honorable Commissioners for Italy and Venezuela differing in opinion, the above cause was duly referred to the umpire for decision.

The claimant, in person or through his witnesses, states that in the middle of the year 1885 he was a merchant residing in Mucuchies,

---

[a] Page 666.

[b] See Poggioli case, with note, p. 847; and Sanchez case, p. 937.

Province of the Andes, and had built up a flourishing business, with large investment of capital; that there were due him credits payable generally at the end of the then present year or the beginning of the following; that his prosperity excited the envy of the local authorities, and on the return of Gen. Rosendo Medina to resume the position of president of the State, he, the claimant, became the object of furious and persistent persecutions by the authorities of Mucuchies, being finally compelled to flee, abandoning everything; that he was never able to return home, but after an absence of a year and a half he returned as near as Medina; that thereafter he brought suit in the local courts to recover debts due him, but the "expedientes" were "extracted" and his debtors were warned, under threats, not to pay him; that he did not finally bring suit because of these facts (although a superior court in 1886 adjudged that his testimonial proof was sufficient), since suit had to be brought in the locality where the acts complained of had been committed, and the same authorities were still in power and inspired with animosity against him and he could not procure an attorney.

The testimony of a number of witnesses was taken and it sustained, in a general way, the above allegations, fixing his damages from every cause, including indirect damage resulting from loss of business down to 1896, at 140,000 bolivars.

If we may presume that the complaint of the claimant embodies a just ground of recovery, it is to be noted that neither he nor his witnesses state the nature of the persecutions to which he was subjected (except the "extraction" of "expedientes," by whom taken not being stated), by whom these persecutions were inflicted (save as they are said to have been by unnamed local authorities), the threats leveled against him, causing flight, the value of the stock he lost, the value of his yearly business, the amount of outstanding credits he was compelled to sacrifice, the value of his lands and improvements, the damage experienced from their forced sale, the place where he spent his absence of a year and a half from the neighborhood, the nature of the threats against his debtors, and the amount of his injury by reason of the threats against them. The witnesses who swear to the amount of his loss (four in number) show no personal knowledge as to any details and make no statement as to them, but simply give their belief that 140,000 bolivars would be "equitable" or "just." The claimant does not state, furthermore, that he ever made any complaint to the superior officers of the Government. In the utter absence of detail it becomes impossible for the umpire to say that he was subjected to any such persecutions, the legal conditions otherwise permitting recovery, as would justify a Mixed Commission in considering the claim, or, if it did so, would enable it to determine even approximately the damage inflicted.[a]

Again, the belief of a witness that a certain estimate of loss would be "equitable" or "just" can rarely be of value to the Commission, which needs definite statements of facts to act upon, and will then judge as to the proper conclusion, which may or may not be that of the witness. Judgments must be founded upon facts furnished by the witnesses.

The claimant excuses himself, as appears above, for not having

[a] See to like effect Sanchez case, p. 937.

brought suit for the damages inflicted upon him by the alleged fact that the authorities committing the wrong were still in office and inspired with animosity against him, and, as may be inferred, it would have been impossible for him to obtain justice. Again, we are not informed as to what control they had over the judiciary. The umpire is therefore unable to judge of the validity of this excuse, which, according to authorities hereinafter cited, should have been proven in the clearest possible manner.

The umpire will close by referring briefly to some authorities bearing upon the question at issue, and the tendency of which would be, from a legal standpoint, to deny in part or altogether, the responsibility of Venezuela before this tribunal, even if otherwise the case had been made out.

In the case of Johnson *v.* Mexico (3 Moore, p. 3032), before the Mexican Claims Commission of 1857, referring to a charge that the Government of Mexico had tolerated and even set on foot disorders affecting the claimant's business, it is said:

> So grave a charge against the government of any country should be maintained by the most unquestionable proof. It should be alleged as a distinct fact and ground of reclamation, and proved by evidence of the clearest character.

In case of Bensley before the same Commission (3 Moore, p. 3018), a boy having been seized by the governor of a State, it was said:

> For the damages resulting from this unauthorized act he was individually responsible to the claimant, and it does not appear that ample redress might not have been obtained by a resort to the judicial tribunals of the country. Had the courts of Mexico been closed to the claimant and justice denied him, that might have constituted a ground for a claim of indemnity against the Government of Mexico. No such case, however, is presented. No appeal was made by the claimant to the courts, and no denial of justice had been proved. Under these circumstances the board can not regard the Government of Mexico as liable to a claim for indemnity on account of the wanton or malicious trespass of the person holding the office of governor of one of the States constituting the confederacy. [a]

The Cahill case (3 Moore, 3066), before the United States and Spanish Commission, may also be referred to. The claimant asked payment for damages suffered by him while conducting a drug store at Cardenas, Cuba, and the breaking up of his business. He attributed his misfortunes to the machinations of a rival druggist, who was also an official, a "subdelegate of pharmacy." Among other things he complained of various acts of the authorities touching matters such as the hanging out of a flag, threats, disrespectful remarks, etc. The arbitrators held that claimant had no title to recover and dismissed the claim.

From the foregoing it appears that the claim must be dismissed, but without prejudice to any right the claimant may have to present his claim in Venezuela courts or elsewhere against persons guilty of any legal wrong so far as he is concerned.

---

[a] Calvo says (sec. 1263): "Dans l'intérieur des limites jurisdictionnelles les agents de l'autorité de toute classe sont personnellement seuls responsables dans la mesure établie par le droit public interne de chaque État. Lorsqu'ils manquent à leurs devoirs, excèdent leurs attributions, ou violent la loi, ils créent, selon les circonstances, à ceux dont ils ont lésé les droits, un recours légal par les voies administratives ou judiciaires; mais à l'égard des tiers, nationaux ou étrangers, la responsabilité du gouvernement qui les a institués, reste purement morale, et ne saurait devenir directe et effective qu'en cas de complicité ou de déni de justice manifeste."

Boffolo Case.

(By the Umpire:)

A state possesses the general right of expulsion; but—

Expulsion should only be resorted to in extreme instances and must be accomplished in the manner least injurious to the person affected.[a]

The state exercising the power must, when occasion demands, state the reason of such expulsion before an international tribunal, and an insufficient reason or none being advanced accepts the consequences.

The only reasons advanced in the present case being contrary to the Venezuelan constitution, and Venezuela being a country not of despotic power, but of fixed laws, the umpire can not accept them as sufficient.

Zuloaga, *Commissioner:*

The right to expel foreigners is fully held by every State and is deduced from its very sovereignty. All international law writers agree upon this, and the European nations use it amply. In the case of expulsion submitted by England and Belgium to the arbitration of the French jurisconsult, Desjardins, he affirms the right fully. Even Italy has not refused to recognize it in regard to Venezuela, having practiced it extensively.

Venezuela, by the constitution of 1893, established as subject to expulsion foreigners having no domicile and notoriously prejudicial to the public order.

The question as to domicile of foreigners is determined in Venezuela by the provisions of the decree of February 14, 1873, and applying these provisions to the case of Boffolo it appears that he had no domicile in Venezuela. He had not been in the country two years; neither did he have a business properly so called. It appears that he had ostensibly, as a manner of living at the time of the expulsion, a connection with Roversi, according to contract of 1899, whose character demonstrated its precariousness, and in addition a small sheet published Sundays, which seemed little more than an advertisement for Roversi.

Boffolo had no domicile in the country, and the fact of his having been notoriously prejudicial to public order is a question that the Government is fully competent to determine, since to it is confided the power to expel without appeal or revision.

From the very statements made by the claimant the evil life and character of the subject may be easily recognized. In the first place, his affirmations to the minister of foreign affairs contain many things notoriously false; in the second place, the only copy of his little periodical we have had in it an attack on the authorities of the country; and in an article he recommends to the workmen to read and patronize *El Obrero*, a periodical of strong socialistic and dangerous tendencies, and which was circulating at about this time, and which really caused considerable prejudice to capital and machinery by its propaganda. No other number of the sheet is known to us.

The right to expel exercised against Boffolo seems to me to have been clearly within the constitution. But there arises another question: Was the constitution in vigor at the time? It was, but with certain restrictions rendered necessary by the reestablishment of public order. And the expulsion of a foreigner who was disturbing this work seems to me to be within these restrictions.

It is to be noted that if it be true that foreigners enjoy the same

[a] See also Paquet case, p. 266, and Maal case, p. 914.

civil rights as the natives, this refers solely to those foreigners who are domiciled. (See art. 12 of the constitution of 1893.)

The proceedings employed in the expulsion appear to me fully justified, though the claimant has presented us with his version of the case. But supposing that what he says is true, it is in no wise different from that followed by European nations generally.

With regard to the amount claimed, this seems to me to be ridiculous; and as is seen in the record, and as has been fully established by the Commission, this man had nothing, and his mode of living was not of a good character.

AGNOLI, *Commissioner:*

The Commissioner for Italy deems it neither necessary nor useful to dwell upon the arguments used by his learned colleague of Venezuela to prove that the Republic has the right to expel from Venezuelan territory foreigners not domiciled in the country and who are prejudicial to public order. It is not desired to contest this right nor that of Venezuela to arrest and condemn an Italian, if only the arrest and condemnation be justified, and with the reservation of the right to claim and exact reparation in each case of an abuse of these rights. An equal right is accorded to Venezuela by Italy.

The question turns upon another point. Let us consider whether the act of expulsion (which is at times legal) was justified in the case of Boffolo. Doctor Zuloaga has quoted from the constitution of 1893 and the decree of February 14, 1873 (which he should not have done in view of the provisions of article II of the protocol of May 7, 1903, which imposes in a precise and peremptory manner upon the Commission the duty of deciding claims according to the principles of equity and without regard to the provisions of local legislation), and after having recalled that said constitution authorizes the expulsion of foreigners not domiciled, and informed us that a domicile is only to be acquired by a two years' residence and establishment in business, now asserts that neither of these conditions had been complied with in the case of the claimant—an assertion believed by the writer to be purely gratuitous.

As a matter of fact, the legation has produced the testimony of three well-known persons, from which it appears that Boffolo established himself in Caracas in 1898. On the other hand, it is of record that he was expelled in April, 1900. Now, unless Doctor Zuloaga prove that Boffolo arrived here subsequent to April, 1898, his statement that the claimant had not had two years' residence in the country at the time of his expulsion must be held to be unfounded, and in all cases of doubt the decision should be in favor of the claimant.

The assertion that the claimant was not actually in business appears likewise unfounded. It is shown by documents submitted to the Commission that he was the depositary of a stock of goods belonging to merchants established here, the Messrs. J. Roversi and V. Alberti, and that said goods were opened to the public under the name of Commercial Sample House, the claimant thus acting as middleman between producers or importers and consumers for the goods thus intrusted to him. If for the lack of means he was not able to do business on his own account (and it is known he was in very modest circumstances), he can not therefore be excluded from consideration as a merchant.

He was, in addition, proprietor and director of a periodical appropriately called "Il Commercio." He had taken a house under a three years' lease, and was occupying part of it as a dwelling and storeroom, besides subrenting the remainder. It is stated, and from a letter of the brother of the claimant included in the record of the case it appears, that some rooms had been occupied by improper characters, and from this unsupported circumstance the Venezuelan Commissioner has forged a weapon against the absent claimant and paints him to the Commission as a man of evil life and fame. These unfavorable aspects are not established by the evidence, but, assuming that they were, the mere fact of his having rented rooms to fast women can hardly be urged as reason for expulsion.

The claimant was not and never had been a go-between; and even if he had been, which the testimony clearly disproves, he would not have thereby become "prejudicial to public order," the condition required by the constitution to justify expulsion.

Further, the declaration of the brother of the claimant, by a principle of fundamental law, may not be taken in part, and, taken as a whole, it shows the animus of the expulsion, for by it we learn that the claimant had demanded payment of rent legitimately due him from a woman who was known to everyone as the favorite of ———. Now, if the Commissioner for Venezuela desires to avail himself of the above statement, he must take it in its entirety.

The Commissioner for Italy can not, however, admit that the claimant was expelled because of his alleged immoral conduct. It is clear that the expulsion was decreed because of the denunciation of an official whose name has not and will not come to light, or, by a still more probable hypothesis, considering the dates of the 1st and 4th of April, 1900, was caused by the publication of an article in No. 49 of the periodical above mentioned, in which was a somewhat severe criticism of the action of a Caracas magistrate, with an entirely incidental allusion to the President of the Republic, and wholly free from a political or disturbing character. In either case the measure adopted was unjustifiable.

Free expression of thought, either in print or in speech, is guaranteed in Venezuela to both natives and foreigners; to Italians in particular, on account of the treaty in force. In case of calumny or abuse the guilty person may be proceeded against and condemned, but in no case imprisoned without sentence of the proper tribunal, much less expelled.

The article published by Boffolo does not certainly constitute an infringement of public or private right, and he was not placed on trial therefor. Even less could it be considered as subversive of or prejudicial to public order, justifying expulsion. The claimant had neither social prestige nor political following sufficient to give him a character dangerous to the peace of the Government. He was but an humble citizen, who concerned himself in no wise with local politics.

The writer has already called the attention of the Commissioner for Venezuela to the fact that, according to the opinion prevalent among writers of international law, governments are held to furnish to legations representing the nations to whom the expelled belong the reasons for such expulsion, which was not done by Venezuela in the case of Boffolo, though requested to do so. Had these been satisfactory and of a character to establish that the claimant had engaged in political

controversy against constituted authority, the representative of the royal Government would have been satisfied, and there would to-day be one claim the less. The Government had therefore not only the legal obligation but also the duty imposed by international courtesy to declare the reasons for the sudden and violent expulsion of the claimant. If it did not do so, we are justified in believing that such reasons did not exist.

In view of all the foregoing, there seems to be ample reason for the umpire to award with entire conscientiousness to the claimant the modest indemnity of 5,000 bolivars, as requested by the Commissioner for Italy, but before concluding this statement he desires to call the attention of the umpire to another circumstance, which is that though the claim of Boffolo has been pending before the Commission two weeks, during which time the subject has been more than once called up, the Venezuelan Government has not so far produced anything justifying the damaging and arbitrary course it pursued in regard to the claimant.

The voluntary and prompt exhibition of such proofs as the Commission would consider indisputable would seem to be due from the Republic, on the hardly acceptable supposition that such existed. Should they hereafter be produced, the writer reserves the right to examine and estimate them, as, coming so late, he can hardly anticipate them.

In any case he must hold that neither the umpire nor the Commissioner for Venezuela could attach much importance to them in the event of their not resulting from documents bearing a date anterior to that of the expulsion, and that Doctor Zuloaga would regard proof collected within the last few days with the same measure of distrust with which he has received evidence submitted by Italians in support of their contentions, and with the intention of combating claims against Venezuela which the Venezuelan Government, through its plenipotentiary at Washington, Mr. Bowen, had, for some unknown reason, considered just.

RALSTON, *Umpire:*

The above case has been referred to the umpire on disagreement between the honorable Commissioners for Italy and Venezuela.

It appears that Gennaro Boffolo, an Italian subject, reached Venezuela in June, 1898, and in the spring of 1900 was a householder in Caracas and the publisher of an Italian weekly newspaper entitled "Il Commercio Italo-Venezuolano." In the issue of April 1, 1900, appeared an article somewhat critical of the local minor judiciary, and also referring, but in an unimportant manner, to the President. Another article recommended the reading of El Obrero, a socialistic paper. Three days later (April 4) the Gaceta Oficial contained a decree directing Boffolo's expulsion, in the following terms:

Considerando: Que de las averiguaciones practicadas por las autoridades respectivas del Distrito Federal, aparece formalmente que el súbdito italiano Gennaro Boffolo, es á todas luces, perjudicial á los intereses nacionales, decreta:

ART. 1°. El súbdito italiano de nombre Gennaro Boffolo será expulsado del territorio venezolano, embarcándose en el puerto de La Guaira en el término de la distancia.

ART. 2°. El ministro de relaciones interiores queda encargado de la ejecución del presente decreto.

Immediately thereafter, or perhaps simultaneously, Boffolo was, as it is said, "summarily" arrested, transported by third-class ticket to Curaçoa, but, through the intervention of the royal Italian legation, allowed to return about a month later.

It is further said, but no proof is offered, that during his absence his house was invaded and plundered, and articles taken belonging to others, the value of which he was compelled to reimburse, and that the claimant was subjected to police persecution, threatened with another arrest, and finally left Venezuela.

That a general power to expel foreigners, at least for cause, exists in governments can not be doubted.[a] (See Hollander case in U. S. Foreign Relations for 1895, p. 775, and also see p. 801, same volume, citations to be found in sec. 206, vol. 2, Wharton's International Law Digest, and other citations hereinafter given.)

But it will be borne in mind that there may be a broad difference between the right to exercise a power and the rightful exercise of that power. Let us illustrate. In the Hollander case (cited above) the Government of Guatemala contended:

> The Government was not under obligation to allow him more or less time to get out of the country, nor to accommodate him in any way. All the practices of jurisprudence, supposing them to be certain and indisputable, fall down before a law clear that comes immediately from the sovereignty of a nation.

To this Secretary Olney very forcibly replied:

> The logical result of that proposition is, that whatever a state by legal formula wills to do, it may do; and that international obligations are annulled, not infringed, by legalized administrative action in contravention of those obligations. * * * I construe the language used to mean that, as a rule of international law, the right of expulsion is absolute and inherent in the sovereignty of a State, and that no other State can question the exercise of this right nor the manner of exercising it. * * * The modern theory and the practice of Christian nations is believed to be founded on the principle that the expulsion of a foreigner is justifiable only when his presence is detrimental to the welfare of the State, and that when expulsion is resorted to as an extreme police measure, it is to be accomplished with due regard to the convenience and the personal and property interests of the person expelled.

We may cite Rolin-Jaequemyns, who reported on the subject to the Institute of International Law in 1888 (Revue de Droit International, Vol. XX, p. 498), and after admitting the right of expulsion said:

> * * * En sa qualité d'être humain il a le droit de ne pas être l'objet de rigueurs inutiles et de ne pas être injustement lésé dans ses intérêts. En sa qualité de citoyen d'un autre État il peut réclamer contre ces rigueurs ou ces spoliations la protection de son souverain. * * *
>
> * * * Il est dès lors légitime que l'État auquel appartient l'expulsé soit recevable à demander communication du motif special de l'expulsion, et cette communication ne peut lui être refusée.
>
> L'acte même de l'expulsion doit d'ailleurs être restreint à son objet direct, essentiel, qui est de débarrasser le sol national d'un hôte nuisible. Le droit de souveraineté nationale n'exige ni ne permet davantage. * * * Mais cette contrainte ne devra pas prendre un caractère gratuitement vexatoire.

He continues:

> 5° Même en l'absence de traités, l'État auquel appartient l'expulsé a le droit de demander à connaître les motifs de l'expulsion, et la communication de ces motifs ne peut lui être refusée.

---

[a] Nociones de Derecho Internacional, by Miguel Cruchaga T. (of Santiago de Chile), says (sec. 177): "Puede el Estado expulsar á los extranjeros por consideraciones de orden público; pero entendemos que este derecho no debe ejercitarse sino con mucha parsimonía y en casos muy especialísimos. El derecho en sí mismo, sin embargo, no puede negarse, puesto que el Estado también lo tiene, según el Derecho Público, con respecto á sus propios súbditos por via de grave pena."

In one of the latest works discussing the subject, "Protection des Nationaux Résidant à l'Étranger" (p. 450), M. Tchernoff shows himself so little friendly to the right of expulsion that he remarks:

Peu de personnes de nos jours soutiennent que le droit d'expulser les étrangers soit une attribution normale de l'État exerçant sa fonction civilizatrice.

Calvo (Dictionnaire du Droit International), title, "Expulsion," says:

But when a government expels a foreigner without cause and in a harsh, inconsiderate manner (avec des formes blessantes), the State of which the foreigner is a citizen has a right to base a claim upon this violation of international law and to demand adequate satisfaction.

See also Bluntschli, Droit International Codifié:

ART. 383. Chaque État est autorisé à expulser pour motifs d'ordre public les étrangers qui résident temporairement sur son territoire. S'ils y ont établi un domicile fixe, ils ont le droit à la protection des lois au même titre que les nationaux.

1. Le droit d'expulser les étrangers n'est pas un droit absolu de l'État; l'admettre serait de nouveau porter atteinte au principe de la liberté des relations internationales. L'État n'est le maître absolu ni du territoire ni des habitants du pays. L'ancienne théorie se fondant sur le principe du moyen âge que l'État est propriétaire du territoire, en avait abusivement déduit l'idée de la souveraineté illimitée de l'État. On reconnaît cependant presque partout à l'État la faculté d'expulser les étrangers par simple mesure administrative et sans que les personnes atteintes par cette mesure puissent recourir aux tribunaux.

ART. 384. Lorsqu'un gouvernement interdit sans motif l'entrée du territoire à un étranger dûment légitimé, ou l'expulse sans cause et avec des formes blessantes, l'État dont cet étranger est citoyen a le droit de réclamer contre cette violation du droit international, et de demander au besoin satisfaction.

1. L'État peut aussi être atteint dans la personne des ressortissants qu'il a mission de protéger. L'expulsion arbitraire peut amener des représentations diplomatiques; la partie lésée a toujours le droit de demander aide et protection à son consul ou de provoquer l'intervention de l'envoyé de son pays.

In the recent Ben Tillet affair between England and Belgium, the arbitrator, M. Arthur Desjardins, of France, in his sentence examined thoroughly the reasons for the expulsion of Tillet (as we shall do hereafter in this case), and also as to the treatment accorded him in connection therewith, and maintained the right of Belgium to expel under the circumstances, and, as well, justified the manner in which Tillet was treated by Belgium. (Journal du Droit International Privé, Vol. 26 (1899), p. 203.)

Hall says (International Law, p. 224):

In such cases (expulsion of individual foreigners residing in a state) the propriety of the conduct of the expelling government must be judged with reference to the circumstances of the moment.

Says Professor von Bar (Journ. Droit Intern. Privé, Vol. XIII, p. 6):

La conscience juridique universelle proteste contre l'usage arbitraire du droit d'expulsion. * * *

Il nous paraît que l'État qui ouvre libéralement aux étrangers l'accès de son territoire ne doit pas pouvoir leur retirer à son gré le droit de séjour. (1) En ce sens Heffter, *Völkerrecht*, sec. 62: "Aucun État ne peut écarter de son sol les ressortissants d'un autre État, dont la nationalité est dûment constatée, ni les expulser après leur avoir fait accueil, sans avoir pour le faire de bonnes raisons, qu'il est tenu de communiquer au gouvernement dont ils relèvent." * * *

Dans tous les cas il est d'une necessité indispensable d'apporter aux mesures de rigueurs qui peuvent être prises contre les étrangers un double tempérament. L'un est de pure forme: L'Etat qui recourt à l'expulsion doit invoquer des motifs de nature à la justifier. L'autre touche au fond: L'expulsion doit être conforme aux traditions et aux principes du droit des gens. * * *

Une peine insignifiante prononcée contre l'étranger à raison d'une injure, d'une contravention de police, ne suffirait pas à justifier une mesure d'exclusion. Pour que

l'infraction qu'il a commise puisse entraîner son expulsion, il faut qu'elle soit telle que, dans l'hypothèse où elle aurait été consommée sur le territoire, elle eût exposé le coupable à une perte assez longue de sa liberté, et à la privation au moins temporaire de certains droits. * * *

Encore faudrait-il, de toute façon, pour que ce fait puisse donner lieu à une expulsion, qu'il soit prouvé, ou tout au moins rendu vraisemblable au plus haut degré, qu'il contient les éléments d'une violation grave et réelle de la loi, ou bien d'une tentative pour la commettre, ou encore d'un acte condamnable, appliqué à sa préparation. * * *

Bluntschli pose en principe, dans son § 384, que l'expulsion arbitraire et non-motivée d'un étranger peut être le point de départ de réclamations diplomatiques de la part de l'État dont il est le national. Ce point est au-dessus de toute controverse. * * *

Woolsey says (International Law, sec. 63, p. 85):

6. No state in peace can exclude the properly documented subjects of another friendly state, or send them away after they have been once admitted, without definite reasons, which must be submitted to the foreign government concerned.

In the opinion of the umpire it may be fairly deduced from the foregoing that—

1. A state possesses the general right of expulsion; but

2. Expulsion should only be resorted to in extreme instances and must be accomplished in the manner least injurious to the person affected.

Must explanation of reasons and justification of conduct be made to an arbitral tribunal when the occasion arises? The question is answered in Moore's Digest.

Orazio de Attellis, a naturalized American citizen, entered Mexico in 1833, and on June 24, 1835, the President issued an order for his expulsion on the ground that he had—

occupied himself again (he had been expelled before becoming an American citizen) in the publication of a periodical in which some productions appear which tend to ridicule the nation and to plunge it into anarchy.

What the productions were and what was their offensive feature was not disclosed. The claimant was so expelled under circumstances of especial hardship. The American Commissioners contended that the expulsion was causeless, inspired by enmity, in violation of rights secured to inhabitants of the Republic by the constitution and contrary to treaty relations.

The umpire (p. 3334) gave judgment in favor of the claimant.

In the case of Zerman *v.* Mexico, before the American and Mexican Commission of 1868, Sir Edward Thornton (p. 3348) said:

The umpire is of opinion that, strictly speaking, the President of the Republic of Mexico had the right to expel a foreigner from its territory who might be considered dangerous, and that during war or disturbances it may be necessary to exercise this right even upon bare suspicion; but in the present instance there was no war, and reasons of safety could not be put forward as a ground for the expulsion of the claimant without charges preferred against him or trial; but if the Mexican Government had grounds for such expulsion it was at least *under the obligation of proving* charges before this Commission. Its mere assertion, however, or that of the United States consul, in a dispatch to his Government, that the claimant was employed by the imperialist authorities, does not appear to the umpire to be sufficient proof that he was so employed or sufficient ground for his expulsion.

The umpire awarded the claimant $1,000.

It appears, therefore, that the Commission may inquire into the reasons and circumstances of the expulsion.

Let us apply the principles above laid down to the case before us.

Boffolo was expelled, as the claimant Government contends (and nothing else is before the Commission), because he published a certain

article supposed to reflect upon the local judiciary and referring in some purely incidental way to the President, and, as stated, recommended a socialistic paper. It is not the province of the umpire to pass upon Boffolo's taste or justice in so doing. He is, however, obliged to examine somewhat, first, as to whether in so doing he offended the laws of Venezuela, and second, whether under the laws the expulsion was permissible.

Sometime previous to the expulsion, and on the 31st day of October, 1899, the present President assumed the executive power, issuing the following proclamation:

Considerando: Que por virtud de los acontecimientos que han determinado el triunfo de la Revolución Liberal Restauradora, la situación política que ha surgido en la República es extraordinaria y de un carácter provisional;

Que mientras se llega á la reconstitución normal del país es indispensable establecer un régimen que, aunque transitorio, asegure y proteja los derechos y intereses políticos y sociales de la ciudadanía, Decreto:

ARTÍCULO 1°. Se declaran vigentes en todo el territorio de la República todos derechos, garantías, y prerrogativos que la Constitución Nacional de 1893 reconoce y otorga á los venezolanos.

ART. 2°. Se declaran igualmente en vigencia á las demás disposiciones de la expresada Constitución en cuanto ne se opongan á los fines de la Revolución Liberal Restauradora y sean compatibles con la naturaleza del Gobierno que de ella ha surgido.

ART. 3°. Regirán en los Estados de la Unión y en el Distrito Federal todos los códigos y demás leyes nacionales de carácter general ó especial, y todas las leyes orgánicas que venían observándose en los diversos y distintos ramos y esferas de la administración pública.

ART. 4°. Los Presidentes Provisionales de los Estados y todos las demás autoridades de la República cumplirán y harán cumplir este Decreto en la parte que les concierna y en el radio de sus atribuciones.

ART. 5°. El Ministro de Relaciones Interiores queda encargado de la ejecución del presente decreto.

Let us see, now, what were the rights, guarantees, and prerogatives recognized and guaranteed by the constitution of 1893.

TÍTULO IV.—*Derechos de los Venezolanos.*

ART. 14. La Nación garantiza á los venezolanos la efectividad de los siguientes derechos:

5°. La libertad personal, y por ella: * * *

* * * 4°. Todos con el derecho de hacer ó ejecutar lo que no perjudique á otro.

6°. La libre expresión del pensamiento de palabra ó por medio de la prensa. En los casos de calumnía ó injuria, quedan al agraviado expeditas sus acciones para deducirlas ante los tribunales de justicia competentes, conforme á las leyes comunes; pero el inculpado no podrá ser detenido ó preso, en ningún caso, sino después de dictada por el Tribunal competente la sentencia ejecutorida que lo condene.

7°. La libertad de transitar sin pasaporte en tiempo de paz, mudar de domicilio, observando para ello las formalidades legales, y ausentarse de la República, y volver á ella llevando y trayendo sus bienes.

14°. La seguridad individual, y por ella: * * *

* * * 4°. Ni ser preso ó arrestado sin que preceda información sumaria de haber cometido delito que merezca pena corporal, y orden escrita del funcionario que decreta la prisión, con expresión del motivo que la cause, á menos que sea cojido *infraganti;* no pudiendo fuera de este caso ordenarse la prisión sino por autoridad judicial, ni los arrestos por la policía pasar de tres días, después de los cuales el arrestado debe ser puesto en libertad ó entregado al juez competente. * * *

* * * 10°. Ni ser privado de su libertad, por causas políticas, sin previa información sumaria, de la cual resulte comprometido en perturbaciones del orden público y sirviendo de obstáculo á su restablecimiento.

Furthermore the constitution provided (Art. 13):

Los extrangeros gozan de todos los derechos civiles de que gozan los nacionales.

In addition to the extracts above given, the excellent and enlightened constitution of 1893 provided:

ART. 23. La definición de atribuciones y facultades señala los límites del Poder Público; todo lo que extralimite esta definición constituye una usurpación de atribuciones.

One is pleased to note from the foregoing that even in time of storm and stress Venezuela recognized that those subject to her jurisdiction were entitled to enjoy freedom of speech and of the press (subject only to trial for abuse thereof before competent tribunals, pursuant to the common laws, with personal freedom until after the sentence), freedom of transit and change of domicile, freedom from arrest (unless pursuant to written warrant, save when taken in flagranti, and except in such case not to be imprisoned unless by judicial authority), not to be deprived of liberty for political reasons, save for disturbing acts, etc.

As appears from a citation already made, the powers of the officers of Government were not autocratic, but Venezuela was a country of laws, governed even in April, 1900, by officials of limited powers; for if their powers were not limited the personal guarantees of the constitution would have been inefficacious—an impossible conclusion, as they were expressly recognized by the proclamation of General Castro.

Let us therefore see what law governed the matter of expulsion, for if none existed the power to expel was wanting. Another conclusion would make Venezuela's Government despotic—not republican or democratic.

The only provisions of law covering the right of expulsion either of natives or of foreigners were in articles 77 and 78 of the constitution of 1893, and read as follows:

ART. 77. Además de las atribuciones anteriores, que son privativas del Presidente de los Estados Unidos de Venezuela, éste, con el voto consultivo del Consejo del Gobierno, ejercerá también las siguientes:

9a. * * *

3°. Arrestar ó expulsar á los individuos de la nación con la cual se está en guerra y que sean contrarios á la defensa del país.

ART. 78. * * *

4a. Prohibir la entrada en territorio nacional, ó expulsar de él, á los extrangeros que no tengan su domicilio en el país y que sean notoriamente perjudiciales al orden público.

According, therefore, to the constitution of Venezuela, only as the nondomiciled foreigner might be shown to be prejudicial to public order would he be expelled. Let us pass over the fact that the Boffolo decree of expulsion declared that his presence was prejudicial to "national interests" and not to the "public order," as limited by the constitution, and see if such cause has been presented to this Commission as would justify the expulsion.

It is suggested that the expulsion may have taken place because of any one of three reasons:

1. That he spoke disrespectfully of the President.
2. That he criticized a subordinate member of the judiciary.
3. That he recommended the reading of "El Obrero," a socialistic paper.

The effective answer to all of these propositions is that freedom of speech and of the press are guaranteed by the constitution of Venezuela, and an expulsion for either one would have been an infringement of the constitution of Venezuela, and this is not to be presumed

the President would have done. The umpire is more disposed to believe that for public reasons satisfactory to itself the Government has chosen not to offer the basis of its action, rather preferring to submit to such judgment as to this Commission might seem meet in the case.

The further suggestion is made that Boffolo, being a foreigner, did not possess the right to criticize the Government to the same extent as Venezuelans, while the Government possessed a larger power over him. To this may be replied that the constitution of Venezuela conferred upon foreigners the same rights as were assured to natives, and for the supposed offenses not the slightest punishment could have been inflicted upon Venezuelans.

Summing up the foregoing, we may (in part repeating) say:

1. A State possesses the general right of expulsion; but,

2. Expulsion should only be resorted to in extreme instances, and must be accomplished in the manner least injurious to the person affected.

3. The country exercising the power must, when occasion demands, state the reason of such expulsion before an international tribunal, and an inefficient reason or none being advanced, accepts the consequences.

4. In the present case the only reasons suggested to the Commission would be contrary to the Venezuelan constitution, and as this is a country not of despotic power, but of fixed laws, restraining, among other things, the acts of its officials, these reasons (whatever good ones may in point of fact have existed) can not be accepted by the umpire as sufficient.

In view of the foregoing it only remains to consider the amount of damages to be awarded. The honorable representative of Italy has indicated that he would be content to accept 5,000 bolivars, and considering the harshness of expulsion as a remedy, the fact that only great provocation will, in the eyes of international law, justify its exercise, and the further fact that expulsion of foreigners so readily leads the way to the gravest international difficulties, as it may be regarded as a national affront, the amount asked seems not intrinsically unreasonable. But bearing in mind the low character of the man in question (as developed before the Commission), and that his speedy return was permitted, the umpire believes his full duty will be discharged in allowing him 2,000 bolivars, and an award of this amount will be entered.

For convenience the umpire subjoins a careful translation of the articles in Il Commercio herein referred to.

FOR JUSTICE.

[Translation—Article taken from Il Commercio of April 1, 1900.]

To His Excellency the Italian Minister.

Your Excellency: I do not understand the Venezuelan code of procedure, much less its application; but the fact to which this article relates is so abnormal, so outside the severest penal code, that as a journalist speaking for the bulk of his readers, I am driven to the onerous necessity of praying your excellency to interpose your authority to the end that what is now obscure may be made plain.

I refer, your excellency, to the prolonged imprisonment of my countryman, Mr. Malenchini.

It is now nearly three months that the above-named has been immured in a foul prison for having struck Mr. Pecchio with a walking stick. Mr. Pecchio was not in

the least injured by the blow, no physician was called to his aid, and he suffered no interruption whatever in the transaction of his business.

It is said there was a quarrel between the two men on account of an alleged attempt at homicide, Malenchini having been armed with a revolver. According to the logic of the accusation, whoever carries a revolver for self-defense is held to be guilty of attempted homicide. If such were to be the rule, not a few, commencing with the President himself, would be in quod.

It may be said that Malenchini was ready to use the weapon and would have done so had he not been arrested. Such is not the case. He carried it solely as a means of defense and had he intended using it he would not have availed himself of his cane, least of all in a place so crowded as the Plaza Bolivar, where the slightest disturbance would surely be followed by an arrest.

That an assault with a cane deserves punishment is conceded without question, but it should be of a proper kind, and not that imposed by the humor of an overzealous advocate who had exaggerated the facts in the case.

Malenchini was interrogated by the judge, and three weeks ago he was tried, and a sentence should have been given in three days. A sentence was finally pronounced, but what a sentence! Based on a nullity! Malenchini was condemned for injury to the person, but that there really was such the sentence alone declares, for there is not the vestige of proof. And as if this were not sufficient, the ten days of his sentence expired on Saturday, the 24th, but he still lingers in jail.

As your excellency may see, there is something strange and mysterious in the case of Malenchini. Your excellency alone has the power and authority to have this mystery unveiled. You alone can see to it that justice be not a vain word for Malenchini, who is lying in a dungeon because he is powerless and without defense.

I and my countrymen trust that this unfortunate incident, as truly dangerous to our nationality as to humanity, will soon be cleared up.

Believe me, sir, with profound respect, your most devoted,

G. BOFFOLO.

P. S.—On the afternoon of Thursday, after the above was already in type, Mr. Malenchini was provisionally released on the payment of a certain sum by his father, who had arrived in aid of his son. But why provisionally? Another mystery.

EL OBRERO.

We have before us the first number of the periodical El Obrero. The title clearly indicates the purpose for which our new confrère has entered the lists. Every workman should read it, and support its publication, as it is the first sheet devoted to the workingman's cause. Il Commercio wishes a long and prosperous life to the new venture.

CASE OF MASSARDO, CARBONE & CO.

(By the Umpire:)

The Italian protocol providing only for payment of a definite sum for "claims of the first rank derived from the revolutions 1898–1900," and the sums so paid being for certain named claims, jurisdiction will be taken over others of the same period. Case retained for proof of Italian citizenship of those claiming interest in a succession.

AGNOLI, *Commissioner* (claim referred to umpire):

The Commissioner for Venezuela contends that the above-mentioned claim should be denied, he interpreting Article III of the Washington protocol of February 13, 1903, in the sense that the Italian Government accepted the sum of 2,810,255 bolivars in complete satisfaction of all indemnities due for acts of the revolution and all other acts from 1898 to 1900, and in support of his opinion invokes, besides the provisions of the article above mentioned, the contents of a note directed by the Royal Italian legation at Caracas to the Venezuelan minister of foreign affairs of December 11, 1902, No. 532.

As regards the protocol, it is to be observed that various arguments may be drawn therefrom to refute the interpretation of the Venezue-

lan Commissioner. As a matter of fact, Article III speaks of claims of the first rank, arising from the revolution 1898–1900. Now, one rank of claims can not logically be qualified as of the first rank if it is not in correlation with another rank or with other ranks of claims. If it had not been intended to implicitly recognize the existence of other demands for indemnity relative to the period 1898–1900, as coming under the Mixed Commission, it would not be possible to read in Article III the words "of the first rank," which establish a clear distinction between claims already examined and settled in the Royal Italian legation in the sum of 2,810,255 bolivars, and another class of claims not submitted, not ajudicated, and not presented to the Venezuelan Government by the legation itself. If the interpretation of Doctor Zuloaga were correct, the article in question would speak in general terms of Italian claims arising from the revolutions of 1898–1900, and would not make any discrimination whatever.

The same distinction appears in Article III in the establishment of the principle that the claims already adjudicated by the legation shall not be reviewed by the Mixed Commission. This exception is, in fact, not formulated for *all* the claims of the period 1898–1900, but only for those of the first rank.

Article IV, in clear and explicit language, offers another argument in support of this said claimant. It states that "all other Italian claims *without exception*," outside of those considered by Article VIII of the protocol "shall be decided by the Commission."

Why, on the occasion in which the plenipotentiaries made an exception relative to the bearers of titles of the foreign debt of Venezuela, did they not also make an exception relative to the claims of the period of 1898–1900 not comprised in the sum of 2,810,255 bolivars, but stated instead that *all* the others outside of those already settled would be examined and settled? The reason is clear. It is because it was never thought to make the exception now presented by the Venezuelan Commissioner.

But is it admissible that the Italian Government should have wished to bar the way in support of a claim as just as the one in question against which, neither in equity nor from any technical point of view whatsoever, is it possible to raise an objection?

Besides, the Venezuelan Government has never yet pretended that there shall not be settled other claims of the period of 1898–1900 than those of the first rank.

In support of this my assertion I cite the case of Oliva Bisagno, to whom the Government itself has but lately offered the sum of 250,000 bolivars as an indemnity for damages suffered by her *in the period 1898–1900.*

It would seem to me that the Venezuelan Commissioner should insist on placing a more restrictive construction on the protocol than has been given by the Venezuelan Government.

But let us come to note 532 of the legation, the scope of which was a peremptory demand for the payment of 2,810,255 bolivars, amount of Italian claims of the period 1898–1900, *examined and found valid by the legation.* Nothing whatever is said of the claims of that period not yet examined by the legation and judged valid, for which diplomatic action remained open and undecided.

Further, the Italian minister says in said note that the Italian Government makes an express reservation of all claims which were or

might be presented by Italian subjects subsequently to the period mentioned, as well for damages arising from the civil war commenced in 1901 as for any others against the Venezuelan Government, and requests that the Government of Venezuela be pleased to declare itself disposed to apply to the settlement of such claims such provisions as shall eliminate ulterior discussions, accepting the decisions of a mixed commission.

Aside from the fact that every exception contained in said note should be held as having been incidental and not direct, and that the protocol of February 13, 1903, has established principles which, even if they were (as they are *not*) contrary to those enunciated in the note mentioned, should serve as the only and absolute rule of the Mixed Commission, it is well to observe that the Italian minister declared in the above-mentioned document that the Italian Government made express exception not alone of the claims arising from acts posterior to the period of 1898–1900, but of all claims presented subsequent to said period, making special mention of those occasioned by the war initiated in 1901, and of those based on whatsoever other title of credit or action against the Government of the Republic.

There is no indication of a restriction as to time relative to this second rank of claims, which includes all those not already settled, and this is the reason why the Italian minister did not deem it necessary to make a specific exception for the claims of 1898–1900 not already liquidated by the legation, and not therefore comprised in those of the first rank. Let it be thoroughly understood that between want of an express exception of any given category of claims and the abandonment of the right to support them there is an absolute and fundamental difference. A relinquishment can never be presumed, but must be tacitly enunciated.

Taking these principles in concordance with the clauses of the protocol, the Commissioner for Italy is of opinion that the claim presented by Mrs. Ernesta Raffo, widow Massardo, through the receiver of the firm of Massardo, Carbone & Co., should be accepted, and an award made to the claimants of the full sum of 18,212 bolivars, plus the interest.

ZULOAGA, *Commissioner:*

This claim is of March, 1898, and, by virtue of article III of the Washington protocol, claims arising during the period from 1898 to 1900 from acts of the revolution of said period were paid the Italian Government out of the sum of 2,810,255 bolivars. No claims for damages within said period can therefore, in my opinion, be presented. The Italian Government decided for itself as to the class of claims coming within this period and paid those accepted by it in the manner stated.

This interpretation of the protocol seems to be amply confirmed by the note of the Italian minister of October 11, 1902, published in the volume of Asuntos Internacionales, page 102,[a] in which it is stated that the

> Royal Government has expressly excepted the claims which were or might be submitted by Italian subjects subsequent to said period, as well for damages arising from the civil war of 1901 as for whatever other title of credit or action against the Government of the Republic.

This latter class doubtless has no reference to damages.

[a] Appendix, p. 995.

Articles II and III of the German protocol likewise exclude claims for this period. Resting on the above reasons, I reject the claim of Massardo, Carbone & Co.

RALSTON, *Umpire:*

The foregoing case has been presented to the umpire, the honorable Commissioner for Italy in his opinion favoring an award for the full amount, and the honorable Commissioner for Venezuela opposing on the ground that the claim originated in the month of March, 1898, and grew out of the revolution commencing in that year, while all claims for the wars of 1898–1900 were settled by the acceptance, by Italy, of the sum of 2,810,255 bolivars. He further insists that the note of the minister for Italy of December 11, 1902 (Asuntos Internacionales, p. 102[a]), made no express reserve covering a case for damages occurring during the period mentioned.

Returning to the protocol, we find that the amount above named was given for "Italian claims of the first rank derived from the revolutions 1898–1900." By reference to the above-mentioned book, page 96, it will be found that this sum was allowed for 123 individual claims which had been appraised by the Italian legation.

The question presented, therefore, is whether, assuming that no express reserve of other claims arising out of the wars of 1898–1900 was made by the Italian legation, such claims should now be recognized.

The protocol does not in terms exclude any class of Italian claims from consideration. The amount paid by Venezuela to Italy for claims was not to extinguish, generally, claims arising from the wars in question, but only to settle certain claims which had been previously enumerated.

The umpire can not imagine that when the protocol was signed there was any intention on the part of Italy to abandon without consideration and without apparent reason other claims of equal equity not theretofore presented. Had the sum paid been designed to extinguish all claims, the situation would have been different.

It is true that the reserves made by the Italian minister may have been vague; but the protocol subsequently passing on the whole matter, and no claims except those of the first rank being reserved from the consideration of this Commission, the umpire believes it to be the duty of the Commission to take jurisdiction over and grant judgment in all other cases originating at least before the date of the protocol where the evidence and the rules of international law justify such action. The umpire reserves consideration of the possible effect upon claims of an earlier date of any prior settlements and treaties not brought to his notice and therefore not now discussed.

The foregoing, however, does not completely dispose of the case. The claim is made in the name of Ernesta Raffo, widow of Massardo. The property taken appears to have belonged to the firm of Massardo, Carbone & Co., whose liquidator is Luigi Carbone, a member of the firm. It does not appear how many members of the firm there were, or what were the interests of each. Neither does it appear that the widow is the sole heir of Massardo, the former apparent member of the firm. If it is designed to claim the interest of the widow alone, her inheritance from the husband should appear and also the proportionate size of his interest in the firm. If it is designed to claim for

[a] Appendix, p. 995.

the entire partnership, the names of all should be given, together with the appropriate proofs of citizenship, for only Italian subjects may have any interest in any claim passed on by this Commission.[a]

The umpire will not now, therefore, finally pass upon this claim, but will retain it until September 1, 1903, that the lacking elements of proof may be supplied or addition of parties may be made.

(The lacking proof being furnished, award for claimants was subsequently given.)

BRIGNONE CASE.

(By the Umpire:)

In the event of conflict of laws creating double citizenship, that of respondent nation must control.

In case of conflict of laws as to distribution of estate, the law of domicile of decedent, especially because of certain laws of Venezuela, must control the more, as otherwise laws of Italy would be given extraterritorial effect. [b]

AGNOLI, *Commissioner* (claim referred to umpire):

In the case of claim No. 60, presented in the name of the estate of Sebastiano Brignone, and after hearing the exceptions in the case taken by his honorable colleague of Venezuela, the Commissioner for Italy sustains the three following points:

1. Primarily, that the claim should be accepted in its integrity, without regard to the nationality of the heirs of the deceased.

2. Secondarily, that the widow and children of Brignone being Italians, the amount of the claim should be awarded to them.

3. By a parity of reasoning, that the estate should certainly be liquidated according to the law of *de cujus*, and that therefore there should be awarded to the Italian relatives of the deceased residing in the Kingdom and claiming, with the widow, a share of the estate, two-thirds of the sum claimed, in conformity with the provisions of the Italian civil code in such case.

With regard to the first point, the claim is sustained by the royal Italian legation in its entirety, because the claim under consideration is essentially Italian.

To determine the nationality of a claim and the competency of the Commission there should be taken into account only the nationality of the claimant at the time of his suffering the damages, and not of the nationality of the persons in whose favor may redound the sum awarded.

By these principles were guided:

First. The French-American Mixed Commission under the convention of 1880. (See Moore, Int. Arb., pp. 2398–2400.)

Second. The court of arbitration of Geneva in the case of the *Alabama*, and the Alabama Claims Commission, organized under the act of June 23, 1874, for the adjudication of the Geneva award. (See Moore, Int. Arb., pp. 2360–2379.)

---

[a] See Corvaïa case, p. 782.

[b] The differences between the doctrines of France, Italy, and Belgium on the one hand and England, the United States, and Germany on the other relative to determination of status, family relations, and successions are extensively discussed by M. Henri Jacques, in 18 Revue de Droit International (1886), p. 563, entitled "La Loi du Domicile et la Loi de la Nationalité en Droit International Privé."

The judge who delivered the opinion based on the argument said, among other things:

> It was a great principle for which our Government had contended from its origin—a principle identified with the freedom of the seas, viz, that the flag protected the ship and every person and thing thereon not contraband. * * *
> Therefore * * * we decide that foreigners entitled to the protection of our flag in the premises, whether naturalized or not, have a right to share in the distribution of this fund. (Moore's Arbitrations, p. 2351.)

A fortiori, it should be admitted that claims originally owned at the time of the damage by Italians, ought to be entitled to indemnity. Moore, in the case of the *Texan Star*,[a] gives an even more conclusive example.

Third. We have, besides, among other more notable precedents, the arbitration of the Delagoa Bay Railway (Moore, 1865, et seq.), in which was sustained the right of an American citizen to be indemnified, even though his name did not directly appear in the company, which was English or Portuguese at the time of the presentation of the claim, and who was at the time merely a shareholder in a stock company. The acceptance of contrary principles would lead to most unjust consequences. In fact, let us suppose that Brignone had at his death left creditors in lieu of heirs, would it be equitable to reject the claim because some or all the creditors were not Italians? What, in fact, are heirs, if not creditors of the *universitas juris* formed of the sum of the property of the estate?

But if the equity of the principle advanced by my learned colleague be admitted, no Italian claim may be admitted without conclusive evidence that the Italian claimant is not indebted to Venezuelans, and has not ceded the sum which may be awarded him to creditors of a different nationality, and particularly Venezuelans. It has not yet occurred to anyone to demand such proof.

Let it be noted that such a cession may have been obtained forcibly by anyone, but more particularly by a merchant, as, for example, in the case of failure. But granting a voluntary cession, our principle—that of the original nationality of the claimant—should prevail, because we should not impede the freedom of anyone to dispose of his patrimony. How, then, can we sustain a contrary rule when cession occurs through the least voluntary of all acts—death?

The Mixed Commission is a tribunal sui generis, before which the Venezuelan Government is summoned. Before an ordinary tribunal might it perhaps be admitted that the local government, except against a foreign creditor, is not compelled to pay a portion of its proven indebtedness, because the sum claimed belongs, in part, to a Venezuelan? Surely not. Why, then, should such an exception be admitted by the Mixed Commission? Why endeavor, by a legal quibble, to evade the fulfillment of a moral and juridical obligation, and why resort to such an expedient before a tribunal of equity which not only can but must, according to the terms of the protocol by which it is governed, reject all technical objections?

It seems to me that the objection raised by my Venezuelan colleague does not agree with any concept of equity. As a matter of fact, he has taken no exception to the morality or foundation of the Brignone credit, and it is inconceivable that he should attempt to exonerate the Venezuelan Government from the payment of an amount which he

---

[a] Moore, p. 2360.

impliedly recognizes as due by said Government. What is, therefore, the practical scope of Doctor Zuloaga's objection? Is it not true that the right to claim from the Venezuelan Government a part of the amount of the claim subsists in the widow Brignone, whatever her nationality?

She must run the same risks as the other heirs of the estate, for her interests therein are bound up with theirs and depend upon the same title. By the fact of her having presented to the Italian legation the documents in connection with her claim, and through said agency submitted it to the Mixed Commission, she acknowledges the competency of this tribunal and at the same time expresses her choice for the Italian nationality, should any doubt exist on that point. It will be noted that I attach considerable weight to this option, given the circumstance of a conflict between the two laws; but of this we will speak later.

Now, I ask, let us suppose that the sum claimed as indemnity was originally owed to a Venezuelan, and that his heirs were Italian; as a matter of fact, the legation would not support such a claim; but admitting that it presented it to the Commission, how would it be received by the Venezuelan Commissioner? He would most certainly reject it, objecting, with reason, that the claim was not originally Italian, and would, I am sure, advance still other sound reasons, as, for instance, that the cession by Venezuelans of their interests in a claim against the Republic to Italians, in order that these latter might make them the object of a claim before the Commission, could not be tolerated.

But why, on the other hand, given but not conceded that the widow Brignone is wholly Venezuelan, not apply *a contrariis*, the same rule? Why say, when the injured party is a Venezuelan and those to whom indemnity should be paid are foreigners, that indemnity can not be awarded because the claim is originally Venezuelan and therefore not to be considered, and when the injured party is Italian and the actual claimants Venezuelans the claim should likewise be rejected, because in this case the original nationality of the claim need not be taken into account? Where is the logic of such reasoning, and where the equity of such a principle? Two weights and two measures can not be admitted.

I will admit that when the cession of an interest forming the basis of a claim takes place, either in bad faith or without just cause, and with the manifest or concealed design of procuring the readiest means for obtaining indemnity, the Commission should not sanction such proceedings; but in the case of the widow Brignone, even though she were a Venezuelan, bad faith is absolutely excluded, and the presentation of the claim as a whole before the Commission is a natural condition of things, not created expressly for secondary ends.

Let us examine the question briefly from a purely juridical point of view. I have observed above that the estate is a *universitas juris;* now, for the same reason the charges against the same, as well as the debts of the deceased, should on principle be charged against all the heirs of the estate; so, also, when it is a question of recovering from the credits of the deceased and of his estate action should be brought in the name and interest of all.

It can not be admitted that a contrary rule should be followed when it is a question of fulfilling an obligation or enforcing a right, when the heirs find themselves, as in the Brignone case, in community, since

the object of the successionary rights of each of them is the estate taken in its entirety.

The heir in his quality of successor has the personal representation of the *de cujus*, and by virtue of these principles the claim in question (whatever be the nationality of the heirs) should be examined and judged by the Commission as an Italian interest, and as such is covered by the provisions of the protocols without any restrictions whatsoever, either expressed or implied, having been stipulated in regard thereto.

With reference to the second point: There is no doubt that the widow Brignone was born a Venezuelan; neither is there doubt that by her marriage with an Italian she became Italian. (Art. 19 of the Venezuelan Civil Code, and art. 9 of the Italian Civil Code.) The Italian Civil Code declares that the foreign woman who marries an Italian citizen acquires his nationality and retains it even in her widowhood, while according to the Venezuelan Code she is so only during the life of her husband; therefore, on the death of Brignone his widow found herself Italian by the Italian law, and Venezuelan by the Venezuelan law.

If in regard to this circumstance Italian tribunals should be called upon to decide there can be no doubt they would declare the widow Brignone to be an Italian, while the local tribunals would just as surely consider her a Venezuelan. Now, what should the decision of the Commission be on this point, given, but not conceded, that it has power to judge and determine the nationality of a claimant in whom the Royal Government, according to its laws and through its legation, has recognized as an Italian?

There is no doubt in my mind that the Commission should consider the widow Brignone as an Italian, and this for the following reasons:

1. The exception urged by the Commissioner for Venezuela rests on "provisions of local legislation," and should therefore a priori be rejected in obedience to Article II of the protocol of May 7, 1903.

2. The coexistence of two nationalities in the same individual not being theoretically admitted in international law, and (as I have more fully set forth in the claim of Giordana) the nationality of origin being in every way the one that should prevail, the widow Brignone should be considered an Italian. In fact, although the lady was born a Venezuelan, she by the terms of both laws became exclusively Italian on her marriage, and her nationality as a widow can not be other than the one she was peacefully enjoying on the date of her husband's decease, when without ceasing to be Italian she found herself invested with an additional nationality. The fact that this latter nationality is the same she had before her marriage does not affect the case, since the question arises at the moment of Brignone's death—that is to say, when to the Italian citizenship of the widow another was added.

3. Admitting that the juridically abnormal fact of the existence of two nationalities in the widow Brignone should be recognized, an international tribunal, such as this Commission, in whose decisions the circumstance of its sitting in Caracas can have no weight, since it might equally have been called to sit in Rome or Washington, or any other city, can not but take into account that the widow by the fact of having herself presented the claim to the royal legation in favor of the heirs of the deceased shows her preference for the Italian nationality, and unhesitatingly chooses it instead of the Venezuelan.

The Commission, therefore, evidently should not impose on her a nationality she does not desire, and should respect her liberty of choice.

4. But admitting that in her case the Italian citizenship does not exclude the Venezuelan, no one surely would dare to affirm that the latter may on the contrary exclude the former. The claimant would at least be as much one as the other. Now, she is entitled to the full exercise of her rights as an Italian, and among these is that of claiming before this Commission, and by this means obtaining, the share to which she is entitled of the Brignone estate as one of the heirs out of any indemnity which may be awarded them either present or absent.

Article IV of the protocol of February 13 is clear and precise. It speaks of Italian claims without exception. To now except claims of persons to whom, though admitted to the enjoyment of another nationality, that of Italy may not be desired, is an infraction of the protocol itself, and is a restriction of its stipulated terms, which should have been done in Washington by the Venezuelan plenipotentiary, but which can not now be done, according to the dictates of common sense and the maxim laid down by Vattel (sec. 264, Bk. 2):

> Si celui qui pouvait et devait s'expliquer nettement et pleinement ne l'a pas fait, tant pis pour lui. Il ne peut être reçu à apporter subséquemment *des restrictions* qu'il n'a pas exprimées.

I ask for no amplification of the protocol, and I hold to its letter "all Italian claims without exception," but I reject all exceptions and restrictions sought to be made in Caracas and which were not made in Washington.

With regard to the third point: If under a most extreme hypothesis, none of the arguments hitherto employed by me have succeeded in convincing the honorable umpire of the justice of my contention, I maintain that the Brignone estate should be liquidated according to the provisions of the Italian law, which says that when, as in the present case, referring to estates ab intestato, the surviving wife or husband joins with the ascending heirs of the deceased, to these latter belong two-thirds of the estate and the remaining third to the survivor aforesaid. (Art. 754 of the Italian Civil Code.) As the father of Sebastiano Brignone is living, as proved by documents submitted by the royal legation, he is entitled to two-thirds of the sum awarded as indemnity by the Commission.

It is a prevailing rule, and the Commission will surely not adopt another, that estates should be liquidated according to the personal law of the deceased, in the correctness of which rule my Venezuelan colleague appears to agree, and thus spares me the necessity for a long dissertation. It suffices for me to quote Article VIII of the preliminary title of the Italian Civil Code, which reads:

> The legitimate and testamentary successions, however, whether as to the order of succession or as to the measure of the rights of succession and the intrinsic validity of the provisions, are regulated by the national laws of the person whose estate is in question, whatever be the nature of the property or in whatever country it may be situated.

In thus inscribing and proclaiming in the Italian Civil Code so lofty and liberal a principle of international law its compilers foresaw that it would redound greatly to their credit, and Italian legislation has warmly welcomed it in every case, whatever the nature of the testamentary property, and it seems to acquire additional force whenever this latter is personal, from the maxim, "*Mobilia sequuntur personam.*"

Fiore, in paragraphs 103 et seq., Volume I, Diritto Internazionale Privato, illustrates and justifies this principle, and in paragraph 109 sums up in these words his learned argument:

> Among all the systems, the one which best responds to rational law is the one adopted by the Italian legislator and found in Article VIII (already cited in the present memorial) of the general provisions of the Civil Code.

Pasquale Stanislao Mancini in this connection says that the "ragione successoria" being naught else than the combination of the principle of property with that of the family should be governed by the law of the person, and I qualify the principle *tot hæreditates quot territoria* as scientifically erroneous, and conducive to complications, incoherencies, onerous charges, and injurious to the heirs.

My honorable Venezuelan colleague in one of the recent sessions of the Commission said, that if there were conceded to the heirs of Brignone residing in Italy two-thirds of the indemnity awarded, the widow might consider herself as injured in her interests, because the local law gives her a larger share of the property of her deceased husband than is granted by the Italian law.

It seems to me the widow, by the fact of her having submitted her claim through the Italian legation, which means that she accepts the Italian law, has impliedly renounced every right she might have under the Venezuelan law in the matter of the partition of the estate.

It would be far too convenient to invoke the Italian law in the prosecution of the claim, and then the Venezuelan in the award of the indemnity.

In any case, whatever may be the difficulty or responsibility of the Commission, it will be avoided by awarding indemnity "to the heirs" of Sebastiano Brignone, as was done in the case of Massardo, Carbone & Co.

It will be the business of the heirs to divide among themselves, by mutual agreement or according to law, the amount awarded them.

I come now to the conclusion, and ask, first, that the honorable umpire award to the heirs of Sebastiano Brignone an indemnity of 81,137 bolivars, with interest from November 1, 1892, to December 31 of the current year; and second, that he allow the ascendant heirs of Brignone two-thirds of said amount, or 54,091.34 bolivars, with interest thereon calculated as above.

No opinion by the Venezuelan Commissioner.

RALSTON, *Umpire:*

This case comes to the umpire upon difference of opinion between the honorable Commissioners for Italy and Venezuela.

The claimants acquired their rights before this Commission through Sebastiano Brignone, an Italian citizen domiciled for many years in Venezuela as a merchant. The claim originated because of supplies furnished by Brignone, Delfino & Co. to the Venezuelan Government in 1892, and is for 81,137 bolivars, with interest from October 8, 1892.

The original beneficiary was married in Venezuela to a Venezuelan woman, September 5, 1891, and died in Caracas in September, 1898. His widow, who is one of the claimants, has always lived in Venezuela, and the question arises whether she may be treated as an Italian subject, and as such entitled to one-third of the estate. Of course, if she be Venezuelan she has no standing before the Commission. It is said

that a conflict of laws as to her citizenship exists as between Italy and Venezuela.

The Civil Code of Italy provides as follows:

ART. 9. La donna straniera che si marita a un cittadino acquista la cittadinanza, e la conserva anche vedova.

ART. 14. La donna cittadina che si marita a un straniero diviene straniera, semprechè col fatto del matrimonio acquisti la cittadinanza del marito.

Rimanendo vedova, ricupera la cittadinanza se risieda nel regno o vi rientri, e dichiara in ambidue i casi davante l'ufficiale dello stato civile di volervi fissare il suo domicilio.

Upon the same points the Civil Code of Venezuela provides as follows:

ART. 18. La extranjera que se casare con un venezolano adquirirá los derechos civiles propios de los venezolanos, y los conservará mientras permanezca casada.

ART. 19. La venezolana que se casare con un extranjero se reputará como extranjera respecto de los derechos propios de los venezolanos, siempre que por hecho del matrimonio adquiera la nacionalidad del marido y mientras permanezca casada.

In the opinion of the umpire there is not a true conflict of laws, if we read the foregoing extracts with a due regard to their spirit.

Each country, speaking for its own nationals, declares that the native-born woman, marrying a foreigner and becoming a widow, having resided all the time at home, reassumes her original condition.

To permit so much of the Italian code as declares that the foreign woman marrying an Italian becomes Italian, to override the Venezuelan code, would therefore be against the spirit of the other section of the Italian code above referred to. It is therefore proper to say that in a true sense their is no conflict of laws.

But if it still be considered that a conflict exists, how should it be determined? Upon this point text writers and courts assist us.

Says Bluntschli (sec. 374):

Certaines personnes ou familles peuvent exceptionnellement être ressortissants de deux États différents, ou même d'un plus grand nombre d'États.

En cas de conflit la préférence sera accordée à l'État dans lequel la personne ou la famille en question ont leur domicile; leurs droits dans les États où elles ne résident pas seront considérés comme suspendus.

In a note to the section he adds:

Contrairement à mes opinions antérieures, je pense aujourd'hui qu'en cas de collision on doit, en faveur de la liberté d'émigration, accorder la préférence à la nationalité de fait, c'est-à-dire, à celle qui s'unit au domicile.

Phillimore, volume 4, chapter 17, section 368, discussing the doctrine determining personal status, says:

An overwhelming majority of authorities pronounce that the law which governs the status is the law of the domicile,

referring to Rocco, Fœlix, and Savigny.

Let us now turn to the courts:

In the cases of de Hammer and others against Venezuela (3 Moore, p. 2456), there arose exactly the question before us. The claimants were Venezuelan born, but married to American citizens, and claimed American citizenship by virtue of the law of the United States of 1855, which declared a citizen—

every woman capable of naturalization married or who might marry thenceforward a citizen of the United States.

Commissioner Andrade decided against the claimant, and the American Commissioners, while not always following his reasoning, reached the same conclusion. Said Commissioner Findlay:

The question in the case is whether this law can have an extraterritorial operation and effect against the will and policy of another country in which the persons in whose behalf it is invoked are and have always been domiciled since their birth; and in my opinion there can be but one answer to that question. Whatever rights the United States had in its power to bestow will unquestionably pass under the law establishing the status of citizenship in favor of non-resident aliens, including the right to take property by descent and succession, and the right to prosecute any claim against the United States; but more than this can not be done without interfering with the rights of other States and involving them and itself in conflicting claims of the most absurd character.

In the case of Jane L. Brand, before the British and American Claims Commission (3 Moore, p. 2488), it was held that the doctrine that the national character of a married woman was in all cases determined by that of her husband

had always prevailed in Great Britain, as elsewhere, where *the domicile* of the wife and widow had continued to be that of the husband's nationality.

It is true, however, that the majority of the Commission in the cases of Calderwood and others (3 Moore, p. 2486), against the strong dissent of Commissioner Fraser, held that a widow of American birth, always remaining in the United States, did not regain her American citizenship, but in view of all the foregoing decisions and authorities this view may be rejected.

The reason for the decision above given, reestablishing citizenship of a woman always resident, upon the death of her foreign husband, in so far as the question of conflict of laws is concerned, is excellently stated in the case of Alexander before the British and American Claims Commission (3 Moore, p. 2529), in which a decision was presented by the American Commissioner which met the approval of the umpire, Count Corti. According to English law the claimant was an English subject, and by American he was an American citizen. Said the opinion:

The practice of nations in such cases is believed to be for their sovereign to leave the person who has embarrassed himself by assuming a double allegiance to the protection which he may find provided for him by the municipal laws of that other sovereign to whom he thus also owes allegiance. To treat his grievances against that other sovereign as subjects of international concern would be to claim a jurisdiction paramount to that of the other nation of which he is also a subject. Complications would inevitably result, for no Government would recognize the right of another to interfere thus in behalf of one whom it regarded as a subject of its own. It has certainly not been the practice of the British Government to interfere in such cases, and it is not easy to believe that either Government meant to provide for them by this treaty.

The conclusion to be reached from the foregoing is that the claimant, Madame Brignone, is a citizen of Venezuela, and is without standing before this Commission.

But a second question arises. There are relatives of the original claimant of the ascending line. What part of the succession may these relatives claim?

The civil code of Italy provides:

ART. 754. Se non vi sono figli legittimi, ma ascendenti o figli naturali, o fratelli o sorelle, o loro discendenti è devoluta in proprietà al coniuge superstite la terza parte del'eredità.

The civil code of Venezuela provides:

ART. 719. * * * Si existen cónyuge y ascendientes legítimos, y faltan hijos naturales, la herencia se divide en dos partes iguales, una que corresponde al cónyuge, y otra á los ascendientes legítimos.

If, therefore, the Italian code is to rule, the ascending heirs will receive from this Commission two-thirds, and if the law of Venezuela governs, they will receive one-half.

The Italian civil code provides:

ART. 7. I beni mobili sono soggetti alla legge della nazione del proprietario, salvo le contrarie disposizioni della legge del paese nel quale si trovano.

I beni immobili sono soggetti alla legge del luogo dove sono situati.

ART. 8. Le successioni legittime e testamentarie, però, sia quanto al' ordine di succedere, sia circa la misura dei diritti successorii, e la intrinsica validità delle disposizioni, sono regolate dalla legge nazionale della persona della cui eredità si tratta, di qualunque natura siano i beni, ed in qualunque paese si trovino.

The Venezuelan civil code contains nothing similar to section 7 of the Italian civil code, but provides as follows:

ART. 8. Los bienes muebles é inmuebles situados in Venezuela, aunque estén poseidos por extrangeros, se regirán por las leyes Venezolanas.

Shall this Commission be controlled by the law of nationality of the decedent, as Italy requires, or by the law of domicile, as indicated by the Venezuelan law? It will be borne in mind that Brignone died at his place of domicile, Caracas.

The differences of principle existing upon the question of succession to the estate of a deceased person are summed up in section 848 of Calvo's work as follows:

SEC. 848. Sur la question des lois généralement applicables aux successions testamentaires et aux successions *ab intestat*, la jurisprudence admet une triple division:

1. La jurisprudence qui soumet *l'universitas juris* (les biens mobiliers et les biens immobiliers) de la succession à la loi du dernier domicile du défunt. Cette jurisprudence est d'accord avec l'opinion de Savigny et les décisions des tribunaux supérieurs de l'Allemagne. Elle est aussi conforme à l'unité de constitution du patrimoine.

2. La jurisprudence, directement contraire, qui soumet les biens à la loi de l'endroit où ils se trouvent, laquelle admet en conséquence la possibilité de l'application de lois différentes aux différentes portions des biens, et ne pose aucun principe relativement aux dettes et aux créances dont il est loisible dans chaque cas de disposer pratiquement aux mieux des intérêts en cause. Cette jurisprudence est basée sur la loi féodale de la souveraineté territoriale.

3. La jurisprudence intermédiaire, qui soumet les personnes et les meubles à la loi du domicile du défunt et les biens à la loi de l'endroit où ils sont situés, *lex situs*. C'est la jurisprudence en vigueur en France (art. 3, du Code Civil), en Angleterre et aux Etats-Unis.

Si la succession ne comprend que des biens meubles, alors on applique le principe que les biens meubles suivent la personne et son domicile; c'est la loi du domicile qui gouverne la succession mobilière.

In the opinion of the umpire, the true rule, at least as to personal property, is indicated by Savigny, who says (Droit Romain, sec. 377, vol. 8):

La succession *ab intestat* se règle d'après la loi en vigueur au dernier domicile du testateur à l'époque où s'ouvre la succession. Cela s'applique notamment à l'ordre d'après lequel la loi appelle à succéder les héritiers *ab intestat*.

This principle is, it would seem, recognized by the Italian civil code, which declares:

ART. 923. La successione si apre al momento della morte, nel luogo dell'ultimo domicilio del defunto.

The Venezuelan civil code similarly declares:

ART. 894. La sucesión se abre en el momento de la muerte y en el lugar del último domicilio del defunto.

The umpire feels, therefore, obliged to follow the principle recognized by both laws as to succession, despite the conflict above indicated,

the Italian law in apparent conflict being regarded as applying under the present circumstances only to estates opened in Italy. Any other view would, in the umpire's opinion, give to the Italian law an extra-territorial effect overruling the law of the domicile where the goods were situate and the decedent was domiciled. The adoption of such contrary principle would in his opinion infringe the territorial supremacy of a state.

But it is urged that no attention should be paid to the local laws of Venezuela because of the provision of the protocol of May 7, 1903, as follows:

> The decisions of the Commission shall be based upon absolute equity, without regard to objections of a technical nature or of the provisions of local legislation.

This unusual provision is to receive a rational and not a strained interpretation, and in the umpire's opinion amounts simply to saying that any local legislation which operates against equity shall be rejected. An extended interpretation rejecting any and all local legislation would at once defeat the very purposes of the Commission, as may well be illustrated by the present case. Mrs. Brignone was married in Venezuela under Venezuelan laws. Deny efficacy to these laws, and no marriage existed, for marriage is, in civilized nations, regulated by law. Her deceased husband acquired a complete interest in partnership assets from his associate (the partnership itself being created in accordance with the provisions of local law) by virtue of laws providing for such transfers. Proofs in this or in other cases have been taken before judges created by local laws and in the manner they provide. Reject local laws indiscriminately and the whole fabric of sworn testimony built up in more than 300 cases presented or to be presented to the Commission absolutely fails.

The only possible question, therefore, left to consider is, whether the provision of Venezuelan law giving the widow one-half of the estate of her deceased husband (there being no children) is contrary to equity. In view of the number of States in the United States as well as elsewhere in which precisely the same rule prevails, it is impossible for the umpire to say that the provision is opposed to equity or could be conceived as shocking to the moral sense of mankind.

A word should be added relative to the suggestion of the honorable Commissioner for Italy that the claim should be allowed without reference to the present citizenship of the claimant, and to enforce this position he cites Moore, pages 2398–2400, and 2360–2379, and 1865.

The first reference (Camy's case) simply sustains the validity of the assignment of an international claim, but the claim being against the United States, and the assignment having been made by a Frenchman to an American citizen, the demurrer of the United States was sustained and the claim rejected. The case is, therefore, if at all in point, opposed to the contention of the honorable Commissioner.

The second reference (*Texan Star* case) shows that a court acting equitably will in proper circumstances recognize the title and citizenship of the actual owner rather than those of the titular owner, whose title simply served temporary purposes.

The third citation (Delagoa Bay case) sustains the real interests of an American citizen who was required by Portuguese law to create a Portuguese corporation to exploit his concessions, and is not therefore in point.

In the view of the umpire, the "Italian claims," of which this Commission has jurisdiction, must have been Italian when they arose as well as when presented.[a] Without discussing this point at length, he confines himself to referring to 2 Moore, page 1353, as well as to cases hereinbefore cited.

No dispute as to fact existing, a judgment will be signed in favor of the Italian heirs of Brignone, for one-half of the amount of the claim, with interest, but without prejudice as to the right of the widow to pursue her remedies elsewhere.

GENTINI CASE.

(By the Umpire:)

Local laws of prescription can not be invoked to defeat an international claim.
Nevertheless, the principle of prescription will be recognized internationally, and equity will forbid the recognition of stale and secret claims.
A claim first presented thirty years after its supposed inception, the existence of which was never before revealed, may be rejected.[b]

AGNOLI, *Commissioner* (claim referred to umpire):

At the session of the Italian-Venezuelan Mixed Commission of the 29th of August the honorable Commissioner for Venezuela, Doctor Zuloaga, intimated that he would not agree to a demand for indemnity from the Italian citizen Odoardo Gentini, because the facts upon which said claim is based occurred more than thirty years ago, from which it appears that my illustrious colleague of Venezuela intends to invoke the principle of prescription.

This conclusion must, it seems to me, be based on motives of equity, or upon rules of international law, or, finally, on the provisions of local legislation.

In each of these three cases the exception taken must be rejected.

With regard to the first point, I observe that a tribunal of equity can not invoke prescription in order to evade obligations established by authentic documents.

If to-morrow a creditor presents to me a receipt of mine, the genuineness of which I can not doubt, and representing a debt of more than thirty years' standing, even though I may legally refuse payment, my conscience would always counsel me to not recur to such exception unless in the case where, though a *summum jus*, it might be a *summum injuria*.

The law which declares a debt prescribed does not, on that account, properly deprive a creditor of his rights, but interposes an exclusively legal obstacle to the double payment of the sum due.

The principle of prescription has indeed been admitted in the codes from motives of public order and with a political character (that of maintaining peace between individuals and preventing property from becoming a perennial source of contention), but it is not based on pure morals, so that when he who may does not invoke it the judge may not officially supplement an unexercised prescription (art. 2109 of the

---

[a] See Corvaïa case, p. 782.

[b] See Spader case, p. 161; and for limitations on rules laid down in the Gentini case see Giacopini case, p. 765, and Tagliaferro case, p. 764.

Italian Civil Code) even in case of minors or incapacitated persons. (Troplong on Prescription, No. 89.)

Dumond, commenting on art. 2223 of the French Civil Code, which has a similar provision, gave as the principal reason therefor "that he who does not oppose prescription may be induced thereto by remorse of conscience."

It is admitted in jurisprudence that a magistrate may not constitute himself an indiscreet patron of a party (V. Zacharie, Vol. III, p. 775; Troplong on Prescription, No. 91) or furnish officially a means of defense which, though permitted under the law, frequently offends the conscience of an honest debtor.

From the point of view of absolute equity, which should inspire the decisions of a mixed commission, I categorically reject the exception of my honorable colleague of Venezuela, and should this question come before the umpire, confidently expect his decision will found itself on my criteria.

On the second point I affirm that prescription is not admitted in the juridical reports based on the *jus gentium*.

I have consulted various authorities and found that while their opinions vary as regards the law to be applied when citizens of different nations raise the question of prescription in the act of regulating private interests, none of them has discussed or even raised this question in the settlement of claims, and therefore of actions of credit sustained by a government in the interest of its subjects as against another government and based on the treaties and protocols, as in our case.

I affirm that I have not found this question treated by the authorities consulted by me, though others may have done so; but on this matter we have the decision of the permanent court of arbitration of The Hague—that is to say, of the supreme tribunal in matters of international law, which decision must have a positive value, the more so that the decision to which I refer, that of the "Pious Fund of the Californias," is quite recent and absolutely analogous from the identical point of view in which we are concerned—the Gentini case.

The court of arbitration was convened to decide a case of credit of the Pious Fund of the Californias, represented by the Archbishop of San Francisco and the Bishop of Monterey *v.* Mexico, and the question was submitted to the court under the terms of a protocol stipulated at Washington, May 22, 1902, between the United States and Mexico.

It is worthy of note that, as in the case of present claims of Italy, so in the Pious Fund case, it was not a question of a credit of the United States against the Government of Mexico, but of a debt of this latter in favor of the prelates above named. The representatives of Mexico raised the question of prescription before the court because the case under consideration was one in which demand for payment had for many years been neglected.

The exception seemed to derive additional force that prescription, according to the law of Mexico, requires five years, and by the existence of a decree of the same Government, promulgated June 22, 1885, calling on all its creditors to present their claims within a certain period (extended by another decree of 1894) under pain of prescription and extinguishment. In fact, the Catholic prelates of Upper California had not insisted upon their credit, either principal or interest, according to the provisions of the above decrees.

The distinguished agent of the United States before the court objected that it was not yet established, that an international tribunal had ever rejected a claim on the ground of an exception based on laws having no validity whatever before a tribunal of such character, and added (as I have already observed herein) that prescription does not extinguish the right of a creditor, but merely impedes his right of exercising it.

It did not require a lengthy argument from the honorable agent of the United States to obtain from the court a decree of payment from Mexico, including this maxim:[a]

Les règles de la prescription étant exclusivement du domaine du droit civil, ne sauraient être appliquées au présent conflit entre les deux États en litige.

This principle is besides absolutely logical and moral, since when it is a question of private credits and debits it may be presumed that he who has permitted the lapse of a long period without bringing his rights into court may have intended to renounce them; or it may be admitted that he should suffer the results of his negligence. But when the debtor is a government, and, moreover, when the demand of the individual may be the subject of a claim, the reasons which may induce a creditor to postpone his action may be many and of varied nature; as, for instance, the interruption of diplomatic relations between the Governments concerned, the lack of political influence of the creditor, the unfavorable financial conditions of the debtor government, the want of faith of the creditor in the impartiality of magistrates, who, unprotected by a feeling of permanency, might against their better judgment become pliant tools of a party, and many other similar motives.

Many reasons may therefore operate to render unavailable a credit against a government, and as it is a general rule that the term of a period of prescription does not commence to run until the day when the payment falls due and action for its recovery may be had, it would be necessary to prove (and the proof would always be difficult and uncertain) when these conditions occurred in the case of claims against governments.

As there is not in international law an exact and generally accepted provision which establishes when and within what limits a credit becomes null and void through prescription, there can not be a presumptive negligence on the part of the dilatory creditor, and the plea of prescription must be absolutely rejected.

In regard to the third point, to wit, the eventual invoking by my honorable colleague of the principle of prescription according to the provisions of local laws, it is only necessary to observe that I have already clearly expressed my opinion in the arguments used by me in my reference to the Pious Fund case, but I will add some further considerations. The law of prescription of Venezuela can not be considered here, inasmuch as it is contrary to the provisions of Article II of the Washington protocol of May 7.

If in the case of claims based on alleged denial of justice it may be opportune and even necessary to search the laws of the Republic to afford this Commission unlimited freedom and facility for the full performance of its duty, in any other case the introduction of them would constitute so patent and manifest an infraction of that clause of the protocol, which is for us the supreme law, that such a fact might well be considered a sufficient cause for invalidating our sentence.

The clause referred to, which we should not and can not ignore, was not included in the protocol without due reason, which was not merely

[a] Sen. Doc. 28, 57th Cong., 2d session, p. 858.)

to avoid placing the Commissioner for Italy in a position of manifest inferiority to that of his Venezuelan colleague, who is known to be profoundly versed in the laws of his own country, while I am at best but superficially acquainted with them.

But inasmuch as the protocol requires no such learning on my part, it is but just that I should avail myself of its authority and refuse to join in any discussion touching Venezuelan codes and legislation.

Without concerning myself, therefore, with the rules from which, according to Venezuelan law, prescription is derived, I wholly reject the principle of prescription as being contrary to Article II of the protocol of May 7, 1903, and request the Commissioner for Venezuela, or the honorable umpire in case the Commissioners fail to agree as to the question of principle, to receive the claim of Odoardo Gentini and award him an indemnity in the following amounts: 293.50 bolivars due him as per receipts; 360 bolivars for eighteen days forcibly closing of his store, and 546.50 bolivars for his illegal arrest—in all, a total of 1,200 bolivars.

ZULOAGA, *Commissioner:*

Thirty years have passed since the transaction to which this claim refers without its appearing that during this long period it has been submitted to the consideration of the Government of Venezuela. The cause upon which this claim is based is barred. It is barred in accordance with the internal law of Venezuela. It is barred in accordance with the Italian law (arts. 1956 and 1936, Civil Code of Venezuela, and 2135 and 2114, Italian Civil Code). It is barred in accordance with the principles of international law, which establishes prescription as a legitimate cause for the extinction of obligations.

Prescription is founded upon a social necessity, and by all civilized peoples and at all times, it has been recognized as a substantial element of stability and peace.

Prescription, says Laurent, is more than a right consecrated by a law. It is a right of humanity. Nations have conceded also that a State is subject to prescription the same as an individual. (Art. 1936, Civil Code of Venezuela; 2114, Civil Code of Italy; 2227, Civil Code of France.) Limitation, therefore, runs against a State as a State ordains that it should run against individuals. Limitation will run against the Italian State as it ordains that prescription should run against an individual, and I do not see why these principles, which have been considered just in the internal civil law, should not be so considered in the life of nations, and why a claim of a civil nature only, and therefore essentially liable to prescription, must become unextinguishable thereby because it is converted into an international claim. It is not explained how a right already barred (if it is called to the attention of the claimant government after the expiration of the legal term) can give rise to a valid claim by the circumstance that the claim, as in the present case, appears as in the first instance as an international one. What would be the length of time necessary for prescription? It would be difficult to determine the shortest period, because an internal law can not govern; but, for my part, I do not doubt that a period of thirty years is more than sufficient, especially where there is a reference to a question between Venezuela and Italy, all the more since this period is greater than both States have fixed for prescription; having made it such an essential to public order that both recite in

their respective laws that there can not be pleaded in opposition to it want of title or good faith.

As a precedent in the Mixed Commissions we find the case of John H. Williams, No. 36, of the United States and Venezuela Commission of 1890 (Moore, p. 4181), which disallowed the claim because it was barred by a lapse of twenty-six years. The argument contained in the opinion gives us to understand that a less term is sufficient.

I believe, therefore, the claim of Gentini against the Government of Venezuela is barred.

AGNOLI, *Commissioner* (supplemental opinion):

The undersigned prays the honorable umpire to take into consideration the fact that the Italian Government has never heretofore had a protocol or a mixed commission for the settlement of its claims against the Government of Venezuela, while the majority of the other European powers—that is to say, France, Spain, England, Holland, and even the United States—have obtained the adjustment of claims by means of commissions opened to all claimants. Therefore, even if the principle of prescription had been admitted by a previous mixed commission, such precedent could have no application to Italian claims, because Venezuela has always refused us mixed commissions and the liquidation of claims accorded by it to other nations, basing her refusal on an erroneous interpretation of the treaty of 1861, against which refusal we have always protested.

It is worthy of note in this connection, besides, that, notwithstanding that, in the French-Venezuelan five claims more than 30 years old (not *one*, as affirmed by the honorable Commissioner for Venezuela), have been liquidated.

In any case, we have the right to invoke in this question also the "most-favored nation" clause (Art. VIII of the protocol), it not being admissible that Italy should have intended to renounce her right to indemnity in a category of claims which other nations have had occasion to obtain.

The honorable umpire should, in addition, appreciate the fact that in the protocol which confers upon this Commission the right of competency in all classes of Italian claims no reserve is made of antiquated claims, but express mention is made of those relative to holders of bonds and those otherwise settled (Art. IV), the only ones not submitted to the action of the Commission.

RALSTON, *Umpire:*

In this case, referred to the umpire upon difference of opinion between the honorable Commissioners for Italy and Venezuela, it appears that the claimant, an Italian, was, in 1871, a resident of Trujillo, when, as it is said, his store was closed temporarily and business injured by the presence of a large number of soldiers, the claimant sent to prison on the order of the jefe, his establishment plundered, and later on forced loans were imposed upon him under threat of imprisonment. The proofs were taken the following year, and from that time till the past month nothing appears to have been done with the claim, it not having even been called to the attention of the royal Italian legation. The claim is for the sum of 3,900 bolivars.

It is submitted on behalf of Venezuela that this claim is barred by

prescription, although it is admitted that no national statute can be invoked against it.

On the other hand, it is insisted for Italy that prescription can not be recognized in international tribunals, this contention being based upon the arbitral sentence given by the Hague permanent court of arbitration in the Pious Fund case. If this contention be correct the argument must stop at this point. Let us examine it carefully.

In the Pious Fund case it was urged by Mexico that the claim, as presented, was barred by two short statutes of limitation, one of five years and a later one of about the same length of time, the claimants having failed, it was said, to present their claims before the proper authorities within the time limited. On the other hand, it was contended on behalf of the United States (American agent's report, p. 63[a]), that—

it has never yet been held in international tribunals that a claim brought before them could be defeated by reason of the existence of a statute of this sort, such statute having no authority whatsoever over international courts.

Passing upon these diverse contentions, the court held (American agent's report, p. 858) that

les règles de la prescription étant exclusivement du domaine du droit civil, ne sauraient être appliquées au présent conflit entre les deux États en litige,

adopting almost verbatim the position taken on behalf of the United States.

It will be noted that the declaration of the court had reference not to the principle of prescription, but to the rules with which civil law had surrounded it. A "règle," as we are told in Bourguignon & Bergerol's Dictionnaire des Synonymes—

est essentiellement pratique et, de plus, obligatoire * * *; il est des règles de l'art comme des règles de gouvernement,

while principle (principe)

exprime une vérité générale, d'après laquelle on dirige ses actions, qui sert de base théorique aux divers actes de la vie, et dont l'application à la réalité amène telle ou telle conséquence.

The permanent court of arbitration has never denied the principle of prescription, a principle well recognized in international law, and it is fair to believe it will never do so. Such denial would tend to upset all government, since power over fixed areas depends upon possession sanctified by prescription, although the circumstances of its origin and the time it must run may vary with every case. The expressions of many international law writers upon this point, including Wheaton, Vattel, Phillimore, Hall, Polson, Calvo, Vico, Grotius, Taparelli, Sala, Coke, Sir Henry Maine, Brocher, Domat, Burke, Wharton, and Markby, are collated in the case of Williams *v.* Venezuela, Venezuelan-American Claims Commission of 1888, cited at length in 4 Moore, page 4181. To them we may add Bello, who, on page 42 of his Derecho Internacional, says:

La prescripción es aun más importante y necesaria entre las naciones que entre los individuos, como que las desavenencias de aquellas tienen resultados harto más graves, acarreando muchas veces la guerra.

---

[a] Senate Document No. 28, 57th Cong., 2d session—United States *v.* Mexico. Report of Jackson H. Ralston, agent and of counsel.

Bluntschli (sec. 279) finds that a taking of territory, originally wrongful, becomes by time transformed into a legal condition.

But it remains true that the international law writers have referred almost invariably to that form of prescription involved in the taking and possession of property known at one time as usucaption, and we are left to examine whether the general principles of prescription should be applied to claims for money damages as between nations.

In using the word "prescription" in the ensuing discussion, let us follow the definition given by Savigny (Droit Romain, vol. 5, sec. 237):

Quand un droit d'action périt parceque le titulaire néglige de l'exercer dans un certain délai, cet extinction de droit s'appelle prescription de l'action.

The same idea is embodied and somewhat enlarged in Article 2219 of the Code Napoléon, which says:

La prescription est un moyen d'acquérir ou de se libérer par un certain laps de temps et sous les conditions déterminées par la loi.

On examining the general subject we find that by all nations and from the earliest period has it been considered that as between individuals an end to disputes should be brought about by the efflux of time. Early in the history of the Roman law this feeling received fixity by legislative sanction. In every country have periods been limited beyond which actions could not be brought. In the opinion of the writer these laws of universal application were not the arbitrary acts of power, but instituted because of the necessities of mankind, and were the outgrowth of a general feeling that equity demanded their enactment; for very early it was perceived that with the lapse of time the defendant, through death of witnesses and destruction of vouchers, became less able to meet demands against him, and the danger of consequent injustice increased, while no hardship was imposed upon the claimant in requiring him within a reasonable time to institute his suit. In addition, another view found its expression with relation to the matter in the maxim "*Interest republica ut sit finis litium.*"

The universal opinion of publicists and lawgivers has been that the statutes of prescription or "limitation," as they have come to be called, were equitable and the outgrowth of a general desire for the attainment of justice. Let us quote some not given in the opinion hereinbefore referred to.

Savigny says (Vol. 5, sec. 237):

Le motif le plus général et le plus décisif également applicable à la prescription des actions et à l'usucaption est le besoin de fixer les rapports de droits incertains susceptibles de doutes et de contestations, en renfermant l'incertitude dans un laps de temps déterminé. Un second motif est l'extinction présumée du droit que protège l'action. Mais ce motif grave et véritable peut aisément être mal entendu. Le sens de cette présomption est l'invraisemblance que le titulaire du droit ait négligé pendant un temps aussi long d'exercer son action si le droit lui-même n'eût été éteint d'une manière quelconque, mais dont la preuve n'existe plus. * * *

Le demandeur peut intenter son action quand il lui plaît; il peut, donc, en la différant, augmenter les difficultés de la défense; car les moyens de preuve peuvent périr sans la faute du défendeur; par exemple, si des témoins viennent à mourir. Restreindre ce droit absolu du demandeur, dont la mauvaise foi peut abuser, est surtout ce qui mérite considération.

In section 245, Savigny says:

Mais la prescription, quoique de droit positif, n'en est pas moins une institution des plus bienfaisantes, et nous ne devons pas, à cause de son origine, affaiblir ou même annuler son efficacité par des restrictions sans fondement.

Says Troplong in "Droit Civil Expliqué," title Prescription, 2d ed., Vol. I, p. 14:

Ces considérations sont, je crois, suffisantes pour nous montrer tout ce qu'il y a d'équitable et de rationnel dans le principe de la prescription. Que le droit arbitraire soit intervenu ensuite pour déterminer la mesure du temps au bout duquel se trouve la déchéance, c'est ce qui était nécessaire pour tenir en éveil la prudence des citoyens et pour donner à tous une règle uniforme. Mais le droit civil n'a fait que travailler sur des notions préexistentes; le droit naturel avait parlé avant qu'il ne songeât à codifier.

Says Laurent, title Prescription, volume 32, page 23, section 12:

C'est plus qu'un droit consacré par une loi; c'est un droit de l'humanité; donc, en cette matière toute distinction entre nationaux et étrangers s'efface, comme n'ayant pas de raison d'être; tout homme peut invoquer la prescription.

In Bouvier's Law Dictionary (Rawle's edition), title Prescription, we read:

The doctrine of Immemorial Prescription is indispensable in public law. (1 Phill., Int. L., sec. 255.) The general consent of mankind has established the principle that long and uninterrupted possession by one nation excludes the claim of every other. All nations are bound by this consent since all are parties to it. None can safely disregard it without impugning its own title to its possessions. (1 Wheaton, Int. L., 207.) The period of time can not be fixed in public law as it can in private law; it must depend upon varying and variable circumstances. (1 Phill., Int. L., sec. 260.)

As appears to the writer, all the arguments in favor of it as between individuals exist equally as well when the case of a national is taken up by his government against another, subject to considerations and exceptions noted at the end of this opinion. For may not a government equally with an individual lose its vouchers, particularly when, if any exist, they are in the hands of far distant subordinate agents? If there be collusion between claimant and official will not government witnesses die as readily as those of private individuals? If the claimant's own action be the cause of the misfortunes of which he complains, will not knowledge of the fact be lost with the flight of time? May the claimant against the government, with more justice than if he claimed against his neighbor, virtually conceal his supposed cause of action till its investigation becomes impossible? Does equity permit it?

And this brings us to a further point. We are told with truth that this is a Commission whose acts are to be controlled by absolute equity, and that equity will not permit the interposition of a purely legal defense, as prescription is said to be.

But is this position correct? As appears from the foregoing citations, the principle of prescription finds its foundation in the highest equity—the avoidance of possible injustice to the defendant, the claimant having had ample time to bring his action, and therefore if he has lost, having only his own negligence to accuse.

Additionally, however, we may refer to the position taken by courts of equity in England and the United States with reference to statutes of prescription.

Says Bouvier (Rawle's edition) title Limitation:

Courts of equity, though not within the terms of the statute, have nevertheless uniformly conformed to its spirit, and have, as a general rule, been governed by its provisions, unless especial circumstances of fraud or the like require in the interest of justice that they should be disregarded. (12 Pet., 56; 130 U. S., 43, etc.) Courts of equity will apply the statute by analogy, and in cases of concurrent jurisdiction they are bound by the statutes which govern actions at law. (149 U. S., 436; 169 U. S., 189.) Some claims, not barred by the statute, a court of equity will not enforce

because of public policy and the difficulty of doing full justice when the transaction is obscured by lapse of time and loss of evidence. This is termed the doctrine of laches.

It thus appears that courts of equity, even when not bound by the statute recognizing its essential justice, have followed it in spirit.

Let us turn to the cognate title of Laches, in the same work, and we find that—

Courts of equity withhold relief from those who have delayed the assertion of their claims for an unreasonable time, and the mere fact that suit was brought within a reasonable time does not prevent the application of the doctrine of laches when there is a want of diligence in the prosecution. (5 Col. App., 391; 155 U. S., 449; 160 id., 171.) The question of laches depends not upon the fact that a certain definite time has elapsed since the cause of action accrued, but upon whether under all the circumstances the plaintiff is chargeable with want of due diligence in not instituting the proceedings sooner (160 U. S., 171); it is not measured by the statute of limitations (155 U. S., 449); but depends upon the circumstances of the particular case (141 U. S., 260). Where injustice would be done in the particular case by granting the relief asked, equity may refuse it and leave the party to his remedy at law (158 U. S., 41), or where laches is excessive and unexplained (34 U. S. App., 50).

* * * * * * *

Laches in seeking to enforce a right will, in many cases in equity, prejudice such right, for equity does not encourage stale claims nor give relief to those who sleep upon their rights (4 Wait, Act. & Def., 472; 9 Pet., 405; 91 U. S., 512; 124 id., 183; 130 id., 43; 142 id., 236; 150 id., 193; 1 App. D. C., 36; 157 Mass., 46); this doctrine is based upon the grounds of public policy, which requires for the peace of society the discouragement of stale claims (137 U. S., 556). * * *

It has been held to be inexcusable for thirty-six years (16 U. S. App., 391); twenty-seven years unexplained (145 U. S., 317); twenty-three years (146 U. S., 102); twenty-two years, during which the defendant company spent much money and labor in improvements (161 U. S., 573); twenty-two years after knowledge of the facts (152 U. S., 412); nineteen years on a bill to establish a trust (7 U. S. App., 481); fourteen years in the assertion of title to lands which meantime had been sold to settlers (4 U. S. App., 160); ten years, in proceedings to enforce a trust in lands (158 U. S., 416); ten years, after the foreclosure and sale of a railroad in a bill by a stockholder to set aside the sale for collusion and fraud, which were patent on the face of the proceedings (146 U. S., 88); nine years in a suit to have a deed declared a mortgage on the ground that it was obtained by taking advantage of the grantor's destitute condition (7 U. S. App., 233); eight years' acquiescence in a trade-mark for metallic paint, during which the defendant had built up an extended market for his product (17 U. S. App., 145); eight years in proceedings where complainant in consideration of $10,000 had released certain claims and sought to set the release aside on the ground that it was entitled to a much larger sum than it received (159 U. S., 243); three years where a person bought property of uncertain value, and after three years brought suit to rescind the contract on the ground of fraudulent representation (31 U. S. App., 102).

We may refer for a moment before concluding to such international precedents as exist upon the subject.

The first case to be cited is that of Mossman before the American and Mexican Mixed Claims Commission of 1868. The claimant alleged that he had been imprisoned unjustly by the Mexican authorities in 1854, and first presented his claim in 1867. Sir Edward Thornton, the umpire (4 Moore, p. 4180), in the course of his discussion said:

It seems unfair that the latter (the Mexican Government) should be first informed of the alleged misconduct of its inferior authorities more than *fifteen years after the date of the acts complained of.* The umpire can not, under this circumstance, consider that the Mexican Government can be called upon to give compensation for a very doubtful injury, and he therefore awards that the claim be disallowed.

The same subject was thoroughly discussed in the case of Williams *v.* Venezuela (4 Moore, p. 4181), heretofore alluded to, in which there had been a delay of twenty-six years in the presentation of an account.

After a very learned and thorough discussion, the Commission held (p. 4199):

Upon these principles, too lengthily discussed, without awaiting further proof called for in defense from Venezuela, we disallow claim No. 36. It was withheld too long. The claimant's verification of the old urgent account of 1841, twenty-six years after its date, without cause for the delay, supposing it to be competent testimony, is not sufficient under the circumstances of the case to overcome the presumption of settlement.

We next have the case of Barberie *v.* Venezuela, No. 47, of the same Commission, and we quote from 4 Moore, pages 4202, 4203, expressions that cast a strong light upon the whole subject-matter under discussion.

It is true that this Commission is an international tribunal, and in some sense is not fettered by the narrow rules and strict procedures obtaining in municipal courts; but there are certain principles, having their origin in public policy, founded in the nature and necessity of things, which are equally obligatory upon every tribunal seeking to administer justice. Great lapse of time is known to produce certain inevitable results, among which are the destruction or the obscuration of evidence by which the equality of the parties is disturbed or destroyed, and as a consequence renders the accomplishment of exact or even approximate justice impossible. Time itself is an unwritten statute of repose. Courts of equity constantly act upon this principle, which belongs to no code or system of municipal judicature, but is as wide and universal in its operation as the range of human controversy. A stale claim does not become any the less so because it happens to be an international one, and this tribunal, in dealing with it, can not escape the obligation of a universally recognized principle, simply because there happens to be no code of positive rules by which its action is to be governed. The treaty under which it is sitting requires that its decisions shall be made in conformity with justice, without defining what is meant by that term. We are clearly of the opinion that in no sense in which the term is used would it be just for us to make an award which would require the levying of a tax on the whole present population of Venezuela to pay a claim which originated before nearly all of the oldest of them were born, and which is presented at a time when it is impossible to say whether it is well founded or not, the delay being without excuse or justification, and we accordingly reject the claim and dismiss the petition.

Before the same Commission was presented the case of Driggs *v.* Venezuela, No. 7, which was rejected on the same grounds as the Williams case. The Commission, among other things, say:[a]

Twenty-eight years had elapsed since the alleged wrong by the Colombian Government, and not a complaint had been made by Driggs. There is not a case on our list that better illustrates the wisdom of the prescriptive rule.

The same principle has just received the consideration of the American and Venezuelan Claims Commission now sitting. The claim of William V. Spader was, by the opinion of Commissioner Bainbridge, rejected. The honorable Commissioner, speaking of it, says:[b]

A right unasserted for over forty-three years can hardly, in justice, be called a "claim."

He further declares—

It is doubtless true that municipal statutes of limitation can not operate to bar an international claim. But the *reason* which lies at the foundation of such statutes, that "great principle of peace," is as obligatory in the administration of justice by an international tribunal as the statutes are binding upon municipal courts.

In opposition to the foregoing it is suggested that the umpire of the French-Venezuelan Commission, now in session in Caracas, has admitted claims dating from 1867, although there have been intermediate

[a] See Decisions United States and Venezuelan Claims Commission, 1890, p. 404.
[b] Page 161.

French commissions. As it is understood that the arbitral sentences referred to were not accompanied by a statement of reasons, we may imagine that they were based upon some exception to the rule above indicated, and we may now refer, at least partially, to exceptions to the application of the principle of prescription between nations.

In a case referred to in 4 Moore, page 4179, it seemed to have been considered that where there was an infraction of a treaty obligation by the legislative power of the Government itself, prescription would not lie. Whether the position be sound or otherwise need not be discussed.

Again, it was recognized in the Williams case (4 Moore, p. 4194) that the time which would bar an account might not affect a bond as to which a public register had been kept.

Further, the fact will not be lost sight of that the presentation of a claim to competent authority within proper time will interrupt the running of prescription.

The qualifications above referred to, and others which might be imagined, can not, however, have any application to the present case, in which for thirty-one years after proof had been prepared the case does not appear to have been presented in any manner, the royal Italian legation, even, until very recently, having been in ignorance of its existence. Of this conduct on the part of the claimant no explanation is offered.

The umpire, while disallowing the claim, expresses no opinion as to the number of years constituting sufficient prescription to defeat claims against governments in an international court. Each must be decided according to its especial conditions. He calls attention to the fact that under varying circumstances the civil-law period is ten, twenty, and thirty years; in England, for many years—for contracts, six years; in the United States, on contracts with the Government, six years, and in the several States, on personal actions, from three to ten years.

It is sufficient to say that in the present case the claimant has so long neglected his supposed rights as to justify a belief in their nonexistence.

A judgment of dismissal will be signed.

GUASTINI CASE.

(By the Umpire:)

Opinion in the Sambiaggio case as to non-responsibility of government for acts of unsuccessful revolutionists save in case of proven negligence (p. 666) affirmed and followed.

The legitimate government can not enforce a second payment of taxes once paid to revolutionary authorities when the latter were for the time being at the place in question the de facto government.[a]

AGNOLI, *Commissioner* (claim referred to umpire):

The honorable umpire in the claim of Sambiaggio has expressed the opinion that the protocol of February 13, 1903, does not implicitly allow indemnity for damages caused by the revolution.

The Italian Commissioner not being able to accept this point of view, on account, no doubt, of a lack of similar data of fact and of law, has

[a] See same principle affirmed by the British-Venezuelan Commission, p. 397.

the honor to present the following new considerations on this controversy, supporting them by documents not heretofore produced and by arguments not yet fully examined.

The honorable umpire justly remarks that the treaty of 1861 does not explicitly admit damages caused by revolution, but we must observe that neither does it reject them. In fact, it says that "Italians in Venezuela shall be entitled to indemnity in the same measure as the nationals," *not* that they "shall have right only." Now, if one right is conceded to foreigners this does not necessarily mean that they shall be excluded from additional rights, which is in point provided by article 26 of said treaty containing the most favored nation clause. And let us observe, by the way, that the treaty of 1861 may not be invoked against the protocol of February 13, and this is to say, that the protocol recognizes rights superior to those recognized by the treaty—that is, including the right to indemnity for revolutionary damages (Art. VIII of the protocol of February 13) above all when a similar advantage is granted others.

Now, we will undertake to show that the Royal Government has intended to reserve and make good the rights of Italian claimants on the basis of a responsibility which includes revolutionary damages. The whole question, according to and judging by the arguments employed in the Sambiaggio case, seems to hinge on the meaning of the word "injury" contained in the English version of the protocol.[a] "Injury," according to its English law meaning, is a "damage done contrary to law; illegal damage." The honorable umpire, therefore, holds that in order to render Venezuela responsible it would be necessary to show that she is so according to the "*jus gentium.*" To reach this conclusion the honorable umpire has recourse to the correspondence between Italy and Venezuela prior to the protocol, and from it he thinks it may be shown that the royal Italian legation sought only to reject the pretension of the Venezuelan Government to limit its responsibility to that recognized by the decree of 1873; but it does not seem to us that his opinion is justified; in fact, the royal Italian legation not only denied this restriction of responsibility decreed by Guzmán Blanco, but has expressly declared (in the note of April 12, 1901, of the royal Italian legation) as follows:[b]

> The Government has given me, in addition, the charge of adding, and I do so add, the most ample reservations in regard to the rights of Italian claimants.

This general reservation had for its object to protect the more important rights of injured Italians—rights which have been contemplated subsequently by the protocol of February 13 (Art. IV). Plainer still was the memorandum note presented by Minister Riva on December 11, 1902, which, by order of his Government, informed the Government of Venezuela that not only did it exact the payment of claims recognized by the legation, but made reservation with regard to other claims on the basis of a much broader Venezuelan responsibility than that partially discussed previously, and which Italy never expressly surrendered. This memorandum served as a starting point for fixing the conditions of the protocol of February 13, 1903. This has been impliedly admitted by the honorable umpire, who has evidently intended to take the text of the memorandum in order to explain the

---

[a] The Italian Protocol was signed in English.
[b] Appendix, p. 995.

views of the Royal Government, and has formally alleged it, saying he had consulted the correspondence of the high contracting parties to acquaint himself with their intentions. Now the memorandum[a]—

expressly reserves all those claims which, posteriorly to the period 1898–1900, were or shall be presented by Italian subjects as well for damages arising from the civil war begun in 1901, *as for whatsoever title of credit or action* toward the Venezuelan Government.

Here, on the eve of a rupture of relations between the two countries, we have a new phase—one in which Italy has asked for a generic and complete, not partial settlement, of all accounts with Venezuela, in which she has considered her rights as a whole, making the most ample reservations, and invoking a broader and indisputable responsibility.

What is the significance of the words, "all those claims * * * for damages arising from the civil war begun in 1901?" Is it not evidently intended to cover thereby all losses and destruction of property occurring in civil strife? Such losses must include those occasioned as well by government as by revolutionary forces.

In the memorandum note reservation is also made "for whatsoever other title of credit or action against the Government of the Republic," thus making double reference to future demands for indemnity on account of Venezuela's negligence in protecting Italian citizens, and to revolutionary damages.

The damages arising from civil war form a sum total embracing all losses, deteriorations, destructions, and damages suffered by property, since such is the meaning of the word "damage," which has nothing to do with the sense of the word "injury," as understood by various American and English jurists. The word damage employed in the memorandum has been repeated in Article IV of the protocol, and translated in the English text by the word "injury." In case of doubt, which of the two meanings should hold, the Italian or the English? Fiore, at paragraph 1036, says:

Where a word used in a treaty has a different juridical meaning in one State from that which it has in the other, it should be determined according as it is understood in the State to which the disposition of the treaty refers.

Evidently this State can be neither England nor the United States, but Italy, the English language having been employed simply for translation, or as an auxiliary tongue, because the third powers can have no part in a litigation which does not concern them. The language of a third nation can not have served except as a copy of the original substantiating the original in case of doubt, but is not to be construed against it. As a still further proof, it may be added that in the official documents published by the Venezuelan Government (Memorandum of December 11 and Gaceta Oficial, containing the official translation of the protocol), the words "danno" or injury were translated into "daño, daños," which are the equivalent of the English term.

The sense of the word "danno," as understood in the vernacular, as well as in Italian jurisprudence, is one and the same, whether referring to damages from natural causes, as storms, fire, etc., or the result of accident or intention, or to damages arising from war. While not wishing to enter into a juridical dissertation on this point, we will, nevertheless, remark that a damage caused by the fault of one occasioning it, directly or indirectly, becomes a civil crime or quasi crime. Only

[a]Appendix, p. 995.

in practice has it happened that the meaning of quasi crime has sometimes been confused with that of damage, in order to avoid the reiteration of definitions and explanations already well understood.

In the Roman law the definition of *injuria* is taken from the Digest: "Injuriam accipimus damnum culpa datum," to become crime or quasi crime (in the English sense of "injury," which, however, at times simply means damage). To "damage" must therefore be added a new element—that of guilt. We say in Roman law that the "damnum est ademptio et quasi diminutio patrimonii;" that is to say, a substraction and a quasi diminution of patrimony; in other words, an indirect loss equivalent to a diminution.

From the foregoing it follows that the protocol did not intend to distinguish between damages caused by unlawful acts and those brought about by civil war, and has not therefore eliminated those of the latter class which the jus gentium, according to some authorities, does not consider entitled to indemnity.

The Venezuelan Government having assumed so broad and extraordinary a responsibility as that of Article IV, should pay not only the damages caused by the revolution, but also those caused by the operations of war, such as bombardments, breaching of walls by shot during battle; in other words, all damages coming under "whatsoever title of credit or action against the Government of the Republic." It is useless to repeat here that Articles III and IV set a limit to the powers of this Commission as regards claims of the second class of the period 1898–1900, and for all other claims without exception, saving as provided in the last line of Article IV.

The responsibility sanctioned by the protocol is, according to the principle that a nation admitted to the concourse of civilized nations, as Venezuela has been, should be held responsible for whatever abnormal occurrences happen within its territory in damage to the interests of pacific foreigners and neutrals. Such is the view of the "Institute of International Law," and more than once expressed by that distinguished body, which counts as members the greatest expounders of the doctrine of the "jus gentium." And further, the rule of the institute itself, formulated after mature consideration and learned discussion, and representing, as it were, the last word in the science of argument, establishes the general responsibility of a state for damages occurring during an uprising or a revolution.

Text of the regulation on the responsibility of states for damages suffered by foreigners during riots, insurrections, or civil war, adopted by the Institute of International Law in the session of September 10, 1900.[a]

1. Independently of cases where indemnity may be due foreigners in virtue of the general laws of the country, foreigners have right to indemnity when they are injured in their person or property in the course of a riot, an insurrection, or a civil war; (*a*) when the act through which they have suffered is directed against foreigners as such, in general, or against them as subject to the jurisdiction of any given state; or (*b*) when the act from which they have suffered consists in the closing of a port without previous notification at a seasonable time, or the retention of foreign vessels in a port; or (*c*) when the damage results from an act contrary to law committed by an agent of the authority; or (*d*) when the obligation to indemnify is founded in virtue of the general principles of the laws of war.

2. The obligation is likewise established when the damage has been committed (No. 1 (*a*) and (*d*)) on the territory of an insurrectionary government, either by

[a] Annuaire de l'Institut de Droit International, volume xviii, pp. 254, *et seq.*

said government or by one of its functionaries. Nevertheless, demands for indemnity may in certain cases be set aside when they are based on acts which have occurred after the state to which the injured party belongs has recognized the insurrectionary government as a belligerent power, and when the injured party has continued to maintain his domicile or habitation in the territory of the insurrectionary government. So long as this latter is considered by the government of the injured party as a belligerent power, claims contemplated in line 1 of article 2 may be addressed only to the insurrectionary government, not to the legitimate government.

3. The obligation of indemnity ceases when the injured parties are themselves the cause of the events which have occasioned the injury.

There is evidently no obligation to indemnify those who have entered the country in contravention of a decree of expulsion, or those who go into a country or seek to engage in trade or commerce, knowing, or who should have known that disturbances have broken forth therein, no more than those who establish themselves or sojourn in a land offering no security by reason of the presence of savage tribes therein, unless the government of said country has given the emigrants assurances of a special character.

4. The government of a federal state composed of several small states represented by it from an international point of view, can not invoke, in order to escape the responsibility incumbent on it, the fact that the constitution of the federal state confers upon it no control over the several states, or the right to exact of them the satisfaction of their own obligations.

5. The stipulations mutually exempting states from the duty of extending their diplomatic protection must not include cases of a denial of justice, or of evident violation of justice, or of the *jus gentium*.

CONCLUSIONS.

1. The Institute of International Law expresses the hope that states will refrain from inserting in their treaties clauses of reciprocal irresponsibility. It believes that such clauses are wrong in that they dispense the states from the duty of protecting the foreigner in their territory.

It believes that states which, through a series of extraordinary circumstances, do not feel themselves to be in a position to insure in a sufficiently effective manner the protection of foreigners on their territory can not withdraw themselves from the consequences of such a state of things except by a temporary interdiction of their territory to foreigners.

2. Recourse to international commissions of inquest and international tribunals is, in general, recommended for all causes of damages suffered by foreigners in the course of a riot, an insurrection, or a civil war.

Is not the protocol of February 13 a sanction of these very principles which seem to be dictated by a desire to safeguard a pacific and well-ordered agreement among civilized nations? The council of contentious diplomacy in Rome referred directly to the foregoing expressions of the Institute of International Law in enunciating the views which served as a basic motive for the rupture of relations with Venezuela, and a demand for an equitable satisfaction.

In accord with this, Fiore, very far from sharing the opinions of the honorable umpire, as he seems persuaded, giving his views on the situation in Venezuela, thus defines her responsibility in the case of one Mammini, already known to this Commission.

The Venezuelan Government is especially responsible by reason of insufficient measures of security and a lack of vigilance in contravention of the principle laid down in the Italian-Venezuelan treaty of June 16, 1861, which provides that the citizens and subjects of one of the contracting states shall enjoy in the territory of the other the most constant protection and security in their persons, etc. (Extract of ministerial dispatch of March 29, 1899.)

It is clear, therefore, that Article IV refers to losses and deteriorations of property in civil wars, and to those inflicted by the government, by states, by the federation, and their employees, as well as by revolutionists, and undue appropriations chargeable to both parties. We lay stress on the term "undue appropriations." To unduly appro-

priate an article is to despoil the legitimate owner to one's own profit, and is equivalent to enriching one's self at the expense of one's neighbor. Whatsoever spoliation, says the protocol, if undue—that is, without right on the part of the spoliator—must give occasion to a claim for indemnity. Thus was had in view the numerous spoliations and forced requisitions unjustly suffered by Italians, especially during the struggles between contending factions at times when foreigners were frequently unable to tell which represented the legitimate power. Such are the limits which the protocol assigns to the responsibility of a state, and this view is the only one which gives a logical and natural meaning to Article IV.

It is idle to insist that such a view is unreasonable and absurd in that, giving a too extended interpretation to Article IV, the Venezuelan Government would be obliged to recognize any claim for damages, even if inflicted by private individuals, and any claim which the royal legation might see fit to present. It is insinuated that in admitting such a responsibility the Venezuelan plenipotentiary would not have been in his right mind; but such a supposition is out of reason, because having accepted the situation we have clearly explained it was but natural he should have affirmed it. May he not have been in the same frame of mind which impelled the Commissioner for Venezuela in the French-Venezuelan Commission to accord, without objection, indemnity for revolutionary damages in 82 cases of the period 1900–1903?

If the French protocol of 1902, was, without objection by Venezuela, construed as allowing indemnity in a multitude of various cases, for the most part of revolutionary origin, running as far back as 1867, France having already had two settlements since that date, while Italy had had none, how can the latter nation be denied an equal treatment when it has a more stringent protocol and enjoys besides the provisions of the most favored nation clause?

Can the Venezuelan Commissioner above mentioned have intended to convey a lesson to the honorable Mr. Bowen, or did not, rather, the latter clearly recognize a condition of affairs so eminently logical and natural? Can the Commissioners and the umpires who on this point have so exactly agreed with the views here expressed be said to have lost their reason? If it be desired to ascertain the views of the high contracting parties, have we not here most precious data?

We have never maintained that indemnity should be exacted for damages inflicted by private parties for whatsoever motive. We have only sought to establish a responsibility for the state of disorder and insecurity arising from the revolutions which have almost continuously distracted the land, and obtain indemnity for damages in the past, with a moral guaranty for our people in the future.

This special responsibility the Institute of International Law establishes on a general principle such as to justify a demand for indemnity in all cases arising from riots and revolutions. In other words, there would be, according to the institute, a general responsibility from the very fact of the admission of Venezuela among the family of civilized nations. Having been received on a par with more progressive nations, it should guaranty order and security of persons and property. Failing in this, it should suffer the consequences of an habitual deviation from internal political order when such results in damage to its associates, and this in virtue of the principles of reciprocity of guaranties established on equal terms among civilized peoples. The

International Institute lays down this concept as a fundamental maxim, and as the highest expression of progress in the "jus gentium."

Even should the Italian Commissioner not go as far as the Institute of International Laws in its conclusions on this point, he must insist that the protocol has established a concrete rule modeled after the most progressive doctrine, and this to him is sufficient.

But there is another point to be examined in this controversy. From our standpoint Venezuela has not been sufficiently diligent in the protection of foreigners—that degree of diligence the omission of which the honorable umpire himself holds to be sufficient to render the State responsible, and to receive claims for damages arising from the revolution. This lack of diligence consists not only in not preventing by appropriate means, but also in encouraging instead of repressing, the damages, violence, and spoliations charged.

To prove this it needs but to narrate in brief the different phases of the "Hernandez" revolution. This revolution, breaking out on May 2, 1898, interrupted on June 12 following, by the capture of its chief, burst forth afresh October 17, 1899. On May 27, 1900, Hernandez was again captured and shut up in the fortress of San Carlos to December 11, 1902. But his associates and partisans continued the war, coalescing subsequently with the forces of General Matos, who had in truth but a small following aside from the Hernandists.

The insurrection spread throughout almost all the Republic, embracing a majority of the nation, and involving an extraordinary organization. It established a de facto government, many even contending that the government so established in various States for considerable periods was more legitimate than that of the capital, alleging that the election of the President had been irregular and that the constitution was illegal, not having been duly published. But we will not enter into a discussion unsuited to a foreigner, who should be content to receive the protection and indemnity due him while respecting the laws of the country in which he lives.

Seeing itself unable to make headway against so many tireless enemies the Caracas Government compromised and offered guarantees and official positions to the principal leaders, civil and military, of the Hernandists, who controlled the most important nucleus of the revolution. In this guise attained to power, in part at least, the revolutionary party of "El Mocho" (Hernandez), which now has members in the cabinet, in Congress, among the high officials of the customs, and even among the presidents of the States. Some of these have governed uninterruptedly, first in the name of the revolution and now in the name of the Central Government. To others were given positions and emoluments, so that the revolution, to-day in subjection, might to-morrow become the controlling power of the Government.

For these reasons, in addition to the general responsibility sanctioned by the protocol, there is invoked here a special responsibility for the period of the Hernandez and Matos revolutions, the latter being a continuation of the former, whose adherents were its mainstay.

In the present case it is contended that the authorities failed in the use of due diligence. The officials who took part in the recent insurrections might, in fact should, be compelled to a restitution of the goods wrongfully taken. They should be proceeded against and condemned to punishment. But the Government has made no effort to punish or even prevent the wrong, nor is it our intention to advise

it to do so, since we are not called upon to criticise its political movements. This policy, however, unquestionably weakens the guarantee of security to foreigners provided for by the treaties, by its constitution, and by international law. It would be absurd to require the claimant, in each case of damage from the Hernandez-Matos revolution, to prove that the Government could, but would not, prevent the damage, since the responsibility of that Government rises to the origin, even to the political and moral causes which precipitated the revolution, and depends upon the character and general consequences of civil war.

The case of Divine (Moore, Vol. 3, p. 2980) can not be appealed to in justification here. A pardon in certain special cases of riots is comprehensible, but certainly not in cases where revolution has progressed so far as to actually take on the functions of government.

In the present instance, either the Government is strong enough to crush the rebellion, and then it should punish at least the ringleaders, causing a restitution of the property unlawfully seized, or else, confessing its inability to cope successfully with the opposing faction, seek to compromise by sharing its functions with the leaders, and then the honorable umpire is in duty bound to award indemnity in virtue of the very principles admitted by him (on which we make reservations with the object of establishing a general responsibility) in the case of successful revolutions. And besides, in the Divine case there was no protocol containing so categorical a clause as that of Article IV of the protocol of February 13, 1903. In that case it is stated that governments granting pardon are not obliged to pay indemnity for damage inflicted by rebels, while in our case, leaving out the discussibility of the principle in virtue of which Mexico was absolved from paying indemnity in the case of Divine, an agreement was made ad hoc which could not have sanctioned the civil and penal impunity enjoyed de facto by the successful revolutionists now sharing in the legal Government. Not thus, without cause, was abandoned the obligation of protecting foreigners, which led to the extreme resort of the blockade. What weight would an isolated and little-known case in Mexico have in such a question by comparison with a general moral principle and the obligation of safeguarding the interests of foreigners?

Summing up our arguments, we maintain:

1. That no distinction should be drawn between revolutions wholly or partially successful.

2. Venezuela has been and is wanting in that degree of diligence which the umpire expressly recognizes as necessary to the exclusion of governmental responsibility.

Returning now to the construction to be given Article IV, let us determine to whom it belonged to make restrictions to the principle of general responsibility defined by the Institute of International Law and sanctioned by the protocol, and what modes of interpretation should be adopted for Article IV.

The making of restrictions, the elucidation of doubtful points, if such there can be, properly fell to the plenipotentiary for Venezuela. There having been submitted to him so rigid a draft of a protocol, one which insisted on a most categorical responsibility on the part of Venezuela (unprecedented in the annals of treaty making), would he

not have refused to assent to the measure, if there had been any doubt in his mind, without further explanation? The opinion of Vattel (sec. 264, Vol. II), incorrectly invoked by the honorable umpire in favor of Venezuela, on the contrary, militates against that country. The Venezuelan Government, with power to explain itself clearly, failed to do so, and it can not now bring forward restrictions of which it gave no intimation in the protocol or during the negotiations at Washington. It accepted its responsibility in all cases of damages and wrongful takings and the admission of all claims without exception. On the other hand the Italian plenipotentiary based himself principally on the memorandum of December 11, above referred to, and on the well-understood meaning of the word "danno" (as was invoked by the honorable umpire himself, who has misinterpreted the intentions of the Royal Government and its plenipotentiary and their idea as to the character and extent of responsibility). The Italian ambassador had even considered the term "Matos revolution" (see the diplomatic documents), inserted in a first draft of the protocol, decisive though it was, not sufficiently rigid and comprehensive, and so preferred a more general formula, which would embrace all claims without exception. Who can complain if Venezuela did not see fit to protest against such general formula without precedent in diplomatic history? Certainly not Venezuela, as is evidenced by the fact that she allowed some 82 claims in the French-Venezuelan Commission for damages arising from the revolution without the least objection.

We will observe in passing that in the event of interpretation of clauses involving the interests of persons who have actually been injured, despoiled, and robbed, any doubt in regard thereto should be resolved, according to general principles of jurisprudence, preferably in favor of the injured party.

The opinion of Wharton (Digest, sec. 133) inclines in favor of the claimants, since the Royal Government knew the extension given to the responsibility of Venezuela and was itself the proposing party.

As to the opinion of Woolsey (sec. 113), it seemed derisive to speak of benefits for claimants while intending to reject their claims, since no real advantage is reserved to them, but at most only a part of what they have lost, and in the case of revolutionary damages, even that will be lost to them.

It is their right, their just due, that it is proposed to secure to them not a favor or a benefit, a just indemnity; perhaps incomplete, but certainly not a gift. The benefit will, on the contrary, fall to Venezuela, whose payments will be far less than they would be were she to pay all she justly owes.

The vague opinion of Pradier-Fodéré (sec. 1188), quoted in the Sambiaggio case, is not sufficient to neutralize the effect of a public treaty so grave and important as is the protocol, under the pretext that there is something doubtful in its provisions and it can only have reference to matters of detail and not to the essence of an express stipulation. Were it so wished it would be possible to find in the clearest and most explicit of texts some elements of doubt and uncertainty by which its most equitable and just purposes might be assailed. What would be the use of protocols if they are to be opposed at every step by doubts, uncertain principles of international law, complex local legislation, and generic and hypothetic views of authors who, under the cloak of the rarely-applicable opinion of Pradier-Fodéré,

would emasculate every provision drawn in the interest of unfortunate foreigners whose indemnities Venezuela has undertaken to pay.

How many opinions or maxims might not be adduced in favor of injured Italians! Calvo (par. 1650) says:

> Les traités étant essentiellement des contrats de bonne foi (actus bonæ fidei) doivent avant tout s'interpréter dans le sens de l'équité et du droit strict. *Lorsqu'il n'y a aucune ambiguité* dans les mots, que la signification est évidente, et ne conduit pas à des *résultats contraires à la saine raison*, on n'a pas le droit d'en fausser le sens et *la portée* pratique par des arguties et *des conjectures* plus ou moins plausibles.

Is it not an evident violation of the foregoing rule to seek to twist and distort out of their obvious meaning the words of a treaty, and to confuse the word "*danno*" with the word "*delitto*," or "quasi-delitto civile" (see art. 1151 *et seq.* of the Italian Civil Code), instead of applying to them their common meaning, spread throughout the entire Italian legislation?

Fiore (par. 1037) recommends:

> The second general rule which it appears to us should be established is suggested to us by Grotius, and this is that, even though the intention of the parties and that to which they have consented is to be considered as expressed in the words written and subscribed to, nevertheless there should be found a meaning in harmony with that which the parties intended, and not have recourse to pitiful subtleties to destroy by the dead letter the true intent of the contracting parties.

Now, who will undertake to say that the plenipotentiaries at Washington intended to elaborate out of their own minds that complicated tissue of hypothesis and technicalities upon the word "danno" with a view to giving it a meaning out of the ordinary, and such as to exclude the payment of indemnity for revolutionary damages—that is to say, more than half of all the Italian claims—while the honorable umpire, speaking of damages of the revolution, by this alone seems to give the word the meaning invoked by us in the name of common sense.

But it is superfluous, nay, even injurious to the cause of justice, to indulge in so many quotations, precedents, decisions of tribunals more or less obscure or contradictory, contrary to the spirit of the protocol, which takes equity as its principal rule of action. The Italian Commissioner and the royal legation have no desire to and can not follow in this road the other members of the arbitral Commission, since, so intending, they might by similar means destroy the integrity of any protocol whatsoever. "Give me but two words of any man's utterance," said Napoleon, "and I will undertake to hang him."

It would thus be possible to take away every vestige of restriction to the powers of the Commission as established by Article IV, which stipulates that in the case of damage or unlawful seizure it must determine if the damage actually occurred, if the seizures were unlawful, and what amount shall be paid.

Now, is it logical and equitable to say the damage took place, the Venezuelan Government is responsible in principle? These things are indisputable. But nothing will be awarded because the plenipotentiaries, though admitting that awards should be made to claimants who were fortunate enough to see the troops who despoiled them enter Caracas, decided to reject the claims of those whose damages were caused by those who did not succeed, but might yet do so, almost as if it had been their intention to cast the fortunes of these claimants on the hazard of a die, or the chances of success of the opposing factions as one would wager on the result of a horse race (in fact, Matos was still in the field after February 13). Would it not have been much

more simple and logical to clothe the Commission with unlimited powers by suppressing altogether Article IV and thus, without words, say to the Commission: "Judge with full and absolute liberty, whether the damage done be legal or illegal, according or contrary to international law?" Where do we find international law, the existence of which is opposed by many, and which is of no force and effect without the mutual consent of the parties, sanctioned by the protocol as a rule of action, giving it preponderance over an express and mandatory clause?

Finally the following point is insisted upon: To say that Article IV, which affirms and establishes in principle the responsibility of Venezuela for damages to property, was simply and only intended to eliminate the objections which had in the past been discussed between the two Governments, is contrary to the rule of international law in matters of interpretation of treaties which states that each special clause must have a special object. Now, in order to do away with the objections formulated by Venezuela on the basis of her laws and the decree of 1873 with regard to claims, it would have been quite sufficient to invoke: First, the constitution of the Mixed Commissions having jurisdiction over all claims without exception, thus avoiding decrees and local legislation; second, Article II of the supplemental protocol of May 7 which removed objections of a technical nature, or those founded on the provisions of local legislation. The reservations made by Article IV have therefore another purpose and may not be considered vain or superfluous by a long argument based on the very local laws so expressly disregarded by the Italian plenipotentiary at Washington, and appeals to which were expressly prohibited by Article II of the protocol of May 7.

It is curious to note how, on certain occasions, for reasons which escape our comprehension, Venezuela pays for damages committed by the revolution, as for instance in the case of Gen. Manuel Corrao, who received 7482.29 bolivars for loss of stamps stolen from him by revolutionists. (See Gaceta Oficial of August 14, 1903.) It may be urged that this is simply a case of voluntary relief to which the Government was in nowise compelled.

But why afford relief when all should suffer equally; why derogate indirectly and in favor of certain privileged ones to a principle which is proclaimed as absolute?

Let us now examine the question solely from the standpoint of equity.

It is repugnant to the umpire to hold the Venezuelan Government responsible for damages caused by revolutionists, for the reason that they are the enemies against which Venezuela is fighting. At first this seems plausible, but in fact is not so. It is not a case of foreign enemies penetrating from outside into the national territory and robbing the inhabitants. It is rather a case of damages committed by insubordinate subjects, whose very insubordination must be held as due to a lack of care and provision on the part of the Government.

The Venezuelan revolutionists are not belligerents, and they have not been regarded as such by either Venezuela or the powers. Their repression is wholly a question of internal policy, and Venezuela can not, in order to escape her responsibility, invoke the rules of international law, applicable only and in a certain measure to damages caused by belligerents.

For the chronic condition of internal political agitation in Venezuela some one must be found morally responsible, and this some one can be none other than the Government, upon whom falls, as a logical consequence, likewise a material responsibility for all damages occasioned by the revolutions.

In addition to refusing indemnities for damages caused by revolutionists, the honorable umpire places foreigners in a condition of manifest inferiority to the natives in so far as regards the protection of their persons and property. The latter may defend themselves by force of arms, the former can not. The natives run the chances of perils or advantages consequent upon the discomfiture or the success of the party to which they belong; but there is nothing for the foreigner but perils and damages. Justice demands, then, that provision be made for a relative indemnity, and thus in favor of the latter the powers have intervened and the protocols of Washington have been framed.

It is futile to say that the carrying out of these protocols will place the foreigners in better position than that occupied by Venezuelans. Venezuela is under no obligation not to indemnify her citizens, and she can readily place them on a par with the foreigners in this respect, as she has done in certain cases of revolutionary damages. Italy has nothing to do with this phase of the question. She only asks that justice be done her sons, and is in nowise concerned with those whom she is not bound to protect. So that if any difference of treatment exists, the fault thereof will not lie at her door, nor will her demands on that account be less equitable.

The refusal to grant indemnity for revolutionary damages will be a grave offense against equity under another point of view. It is a fact that the troops of the Government have everywhere defeated those of the revolution, and that all the arms, ammunition, stores, animals, money, etc., in possession of these latter, have passed into the possession of the former, for their use and disposal. Almost all of this property was violently, or at least unduly, taken from the inhabitants, and it is no exaggeration to say that the larger share belonged to foreigners. Were the honorable umpire to deny indemnity to the foreigners in question he would be sanctioning an enrichment of the Venezuelan Government at their expense—a thing which to us appears contrary to justice.

When, therefore, damages have been inflicted upon foreigners simultaneously by government and by revolutionary troops, or successively by either, it has frequently been impossible for claimants, perhaps for a lack of eyewitnesses easily understood at times of agitation and terror, perhaps because the courts were not in operation for months after the occurrences complained of, to determine what portion of the damages suffered by them were chargeable to one and what to the other party—i. e., government or revolution.

Now, it may happen that in these cases the honorable umpire will fail to find elements by which to discriminate between damages entitled to indemnity and those to which he has so far refused it. He must, therefore, either integrally accept the claims or reject them utterly. In the first hypothesis—the only just and acceptable one—he will run counter to the principles heretofore laid down by him; in the second he will deny the sacredness of a right admitted without restrictions of any kind by Venezuela herself.

Let us now cast a look to the future. However optimistic we may choose to be, it would be difficult to believe that revolutions in Venezuela are at an end. Hence, future revolutionists, (never, according to our experience, promptly suppressed), strong in the decision of the honorable umpire, may with absolute impunity make themselves masters of the persons or property of Italians with entire freedom from any obligation to indemnify in the event of their party not being successful. This feeling of security will be a powerful incentive to abuses of every sort, while the assurance that the country would in every instance be held to a strict accountability for damages inflicted upon foreigners could not but act as a salutary check.

The decision in the Sambiaggio claim on the other hand will strongly tend to make Italians heedless of their neutrality, for even the honorable umpire himself would hardly expect these people to rise to the sublime heroism of allowing themselves, with meekness and equanimity, to be stripped of their possessions by revolutions, with the certainty that their claims would never be indemnified. They will have to either resort to arms for self defense, or, making common cause with the revolutionists, assist these latter to attain to power as the only means of securing reimbursement. All of which would injure the peace of the Republic and tend to inaugurate a profoundly immoral and subversive state of affairs.

Great as may be, therefore, the responsibility which the honorable umpire seems thus far disposed to assume for past events, a much greater will rest upon him in the future, either on account of attempts upon the life and property of Italian citizens, or the political tranquillity of the Republic, which, in view of its best interests, can hardly be grateful to him should he in this present claim decide not to adopt principles different from those governing his previous decision.

Let us now consider the treatment to which Italian subjects are entitled under the provisions of the "most-favored-nation" clause contained in the Italian-Venezuelan treaty of 1861, and confirmed with especial reference to claims in the Washington protocol of February 13, 1903.

Assuming that the Guastini claim (which, had it been French, would have been awarded indemnity for revolutionary damages, but, being Italian, is in danger of rejection) seems expressly calculated to render more glaring the injustice of the treatment which it is proposed to inflict upon our fellow-citizens, let us call attention to the fact that the treaty of 1861 has never been repealed, and has never for a moment ceased to be in force. There has been no declaration of war between Italy and Venezuela, and the blockade has been no more than an interruption of diplomatic relations, which could not have annulled existing treaties according to the opinion of the best authorities on international law.[a]

It is true that Article VIII of the protocol of February 13 speaks of the treaty as being "renewed." But if we consider well we will see that the word was used *ad abundantiam*, to obviate all future doubt and discussion. In the said article there is no explicit declaration that the treaty had ceased to exist, and the sole purpose in view was precisely to explicitly confirm the "most-favored-nation" clause now in

[a] See, however, decision of the Hague Permanent Court of Arbitration in the Venezuelan case, considering that a state of war existed. Appendix, p. 1058.

force, and to give it so full and ample an application as to render its elusion by subterfuge impossible.

It was not possible to more clearly express this intention than was done by the phrase—

> The Italians in Venezuela and Venezuelans in Italy shall in all respects, and particularly in the matter of claims, enjoy the provisions of the most favored nation clause, as stipulated in article 26 (of the treaty).

In order that the scope of this fact might not suffer diminution from any restrictive interpretation of Article IV of the treaty, which, without excluding better conditions, provides that Italians in Venezuela shall not in any case receive a less favorable treatment than that accorded the nationals, the last line of Article VIII of the protocol provides that the treaty shall never be invoked against the provisions of the protocol.

In the decision in the Sambiaggio case not only was there no account made of this provision of the last line of Article VIII of the protocol of February 13 and the treaty invoked against it, but there was likewise invoked the noted Article IV, to prevent the application of which it is well known that the last clause of Article VIII, above mentioned, was especially framed, if it be desired to discuss the question logically and with unprejudiced mind. But let us admit, for the sake of argument, that the treaty of 1861 was no longer in force on February 13 of this year. None the less would the "most favored nation" clause apply in favor of Italian claimants since the treaty was renewed and confirmed by the protocol of that date.

In fact, it can not logically be held that so important a clause of a protocol framed expressly to settle a preceding question with regard to claims should not be applied to the claims themselves; to claims of a civil war not yet then terminated, and which continued for five months after the signing of that instrument.

It is in any event an unquestioned rule of law that an explanatory clause is retroactive in its effect, because, except in cases of resjudicata, it tends to clear up the intention of the legislator, and, in the present case, that of the original negotiators.

Fiore, after a long discussion of this subject, thus sums up his arguments in the following maxim (par. 1012):

> The effects of international conventions extend, on general principles, to juridical relations established and formed prior to the stipulations of the treaty. A contrary provision might, however, be provided by express agreement.

This "express agreement" does not appear either in the treaty or in the protocol, and hence the umpire's concept of the nonretroactivity of Article VIII of the protocol does not seem to conform to the principles of international law.

To us, however, it seems clearly established that the "most favored nation" clause should apply in every supposable case in the interests of Italian claimants. It remains to be seen whether this application may be invoked by us in view of the decisions rendered in the French-Venezuelan and German-Venezuelan Commissions, in which indemnities were granted to French and German claimants for revolutionary damages.

With regard to this, it has been objected that if this principle were admitted, should those commissions subsequently render decisions of an opposite nature, it would become necessary for this Commission to follow them in this devious and uncertain path. Hence it has been

concluded that this Commission is not to accept as binding on it decisions rendered in the others.

We will merely observe, in relation to the foregoing supposition, and more especially with reference to the French-Venezuelan Commission, that the latter has about terminated its labors, that more than eighty indemnities for revolutionary damages have been granted without discussion on the part of the Venezuelan delegate in said Commission, and that when he, with tardy objections attempted to raise difficulties, the umpire cut short those objections by declaring that there must be complete similarity between damages created by the Government and those of the revolution. So far as the German-Venezuelan Commission is concerned, we have time to consider this point, and should it transpire that its decisions have changed we will not refuse to do so, but there is no reason to anticipate such change, in view of the evident equity of the course so far adopted by it.

It suffices us that a single one of the Commissions assembled in Caracas for the settlement of foreign claims should have granted indemnity for revolutionary damages to give us the right to demand and obtain that an equal treatment be accorded Italian claimants.

In fact, the decisions in this sense of a single Commission even would constitute the authentic and sovereign interpretation of the treaty and of the protocol stipulated by the Venezuelan Government for the pacific settlement of claims brought forward by subjects of the respective nations. Hence it is that, according to the protocols and treaties, of which the decisions of the Commissions are the unchallengeable interpretations, we demand for our fellow-citizens the application of the "most-favored-nation" clause. But granting that Article IV of our protocol lends itself to a double interpretation, which we positively deny, the honorable umpire should, even reluctantly, give a decision granting indemnity for revolutionary damages, in order to avoid giving one which, in view of the action of the French and German Commissions in this respect, would be in open contradiction with the provisions of Article VIII of the protocol of February 13, above named.

If the treatment accorded the most favored nation be not accorded us by the granting of indemnity for revolutionary damages, in what other case may we hope to obtain this advantage? What effect, if not this, has the clause referred to? Shall we remain satisfied with a differential treatment which leaves us in a position of manifest inferiority, when the treaty of 1861 and the Washington protocol guarantee to us the contrary in the widest and most explicit manner?

If the honorable umpire rejects claims for revolutionary damages, the effect will be as though Article VIII of the Washington protocol had not been written, or as if the provisions of the same were to have no application—a conclusion repugnant at once to intellect and to conscience. In short, such a course would be tantamount to an emasculation of the entire protocol, since what has so far been granted by the honorable umpire is nothing if not that which in principle was not refused by Venezuela, even before the framing of that instrument—that is, that indemnity should be granted for damages caused by the Government or its agents. Now, when it is considered that, as has already been remarked, the Venezuelan Commissioner in the French Commission conceded, without discussion, over 80 claims for revolutionary damages, it should logically and in good faith be recognized

that the interpretation given in that tribunal to the French protocol, much less explicit than ours, is the one admitted by the Venezuelan Government itself.

If, indeed, the Commissioners are free to judge according to rules of equity and justice, and with full and absolute independence, the facts and circumstances on which the claims are based, and the efficacy of the respective proofs, they are none the less, in questions of principle, as in the question of revolutionary damages, bound by the instructions of their governments, and governed by them in the judgments they render.

None of us has accepted the honorable charge which has been intrusted to him without first thoroughly investigating between what limits and according to what general rules lay the duties of his office. Our appointment as Commissioners, who are not exactly or exclusively judges, clearly shows this.

The diplomatic course pursued by Italy in Venezuela in favor of her claimants, if always inspired by extreme moderation, has nevertheless constantly aimed to secure to injured Italians a treatment analogous to that granted to other foreigners. The honorable umpire will find an absolute proof of this in the documents we send herewith, which are all of an earlier date than that of the protocol of February 13, to wit, in the note of the royal Italian legation at Caracas to the Venezuelan minister of foreign affairs of April 24, 1901, in that of the Italian minister of foreign affairs at Rome to the United States ambassador at Rome, in a telegram of the aforesaid minister to the ambassadors at Berlin, London, and Washington and in the telegraphic reply to the latter.

Convinced that the honorable umpire will recognize that Italy is not here asking more than it has always been her intention to ask, even prior to the negotiations at Washington, we await with confidence a decision from him in favor of the claimant, Luigi Guastini in the sum of 582 bolivares for damages inflicted upon him by civil authorities and for judicial expenses, and in the sum of 6,247 bolivars on account of requisitions, forced loans, and other damages from troops and authorities of the revolution, or a total of 6,829 bolivars.

ZULOAGA, *Commissioner:*

In this case the honorable Commissioner for Italy has deemed it proper to reopen the discussion touching the responsibility of Venezuela for damages caused by acts of revolutionists, especially with reference to the Washington protocol.

To me it seems that the decision of the honorable umpire, given in the Sambiaggio case, has settled the question. The Commissioners fully stated their opinion in that case before the honorable umpire, verbally and in writing, and he then gave a learned and extended decision in which were carefully considered and solved all the points which the honorable Commissioner for Italy now desires to reconsider, and I believe the subject to be exhausted, as appears proven by the fact that the new opinion of the honorable Commissioner simply endeavors to refute the decision of the umpire. I will not undertake for my part to make a new exposition, since it would only result in uselessly prolonging the labors of the Commission.

Venezuela never accepted responsibility for claims arising from acts of revolutionists, as is evidenced by her laws. In the case referred to

by the honorable Commissioner for Italy, which appears to be inferred from an Executive resolution published in the Gaceta Oficial of August 14, only by a strained interpretation may it be construed that the Government had accepted such responsibility. There was no disbursement in payment thereof, nor was it paid in any other way.

The honorable Commissioner for Italy insists that the French-Venezuelan Commission accepted revolutionary claims, and referring thereto I will quote here the opinion of the Venezuelan Commissioner in that Commission:

> Notwithstanding the respect which the Commissioner for Venezula owes to the decision which has been rendered by the honorable umpire in the claim of Antoine Bonifacio and in other cases where indemnity has been claimed for damages to property by revolutionary forces which have committed depredations in various sections of the Republic, and principally in the town of Carúpano, I consider it my duty to maintain the opinion heretofore expressed by me, that claims based on negotiations, loans contracted between revolutionary chiefs and private individuals, as well as those for forced requisitions and damages sustained at the hands of revolutionary troops by neutrals, do not affect the responsibility of the Government of Venezula.[a]

The historical-political narration made by the honorable Commissioner for Italy for the purpose of deducing the responsibility of the Venezuelan Government for its lack of diligence in suppressing the revolution is weakened by serious inaccuracy in both its general scope and minor details. The Venezuelan Government did energetically and resolutely attack the revolution, and the fact of its having continued to the present year was due to the action of the three allied powers in destroying the war vessels of the Government, with which Venezuela was pursuing the dismembered revolutionists, permitting the latter to reorganize, and thus cause new and bloody combats.

"The most-favored-nation" clause invoked by the honorable Commissioner for Italy finds no place in the labors of this Commission, but refers solely to the drawing up of treaties, not to the application of their provisions, which must necessarily depend on the point of view of those who construe them. It would be well to note, however, that it is extremely difficult to determine which is the nation having the most favored claimants in these mixed commissions.

In some, as in this one, by the decision of the umpire a long delay has been granted for the presentation of the claims; in others, not. In some, the consideration of proof has been left absolutely free; in others, not. In some, the responsibility of the Government for acts of revolutionists has not been admitted, while admitting its responsibility for the acts of its agents; in others, the Government has been held accountable for the acts of revolutionists, but not for the acts of its agents. Again, interest has been allowed in some commissions, and not in others. England has presented no revolutionary claims, yet it has a protocol similar to the Italian. By what criterion is it possible to determine which is the most favored nation in carrying out the provisions of the various protocols?

There remains but a brief consideration of the serious charge made by the honorable Commissioner for Italy that the doctrine of the nonresponsibility of the Government for acts of revolutionists will prejudice the peace of the Republic and tend to inaugurate a profoundly immoral and subversive state of things, and, he adds, the umpire will incur a grave responsibility for future attempts against the lives and property of Italians in Venezuela, and even for the peace of the

[a] Acquatella case, p. 487.

Republic, in deciding, as he has, that the Government can not be held for the acts of the revolution.

Immoral and unjust it is to assume to withdraw Venezuela from the operation of laws which govern all cultured peoples, and insist that the honorable umpire shall decide accordingly. Immoral and unjust to ask that foreigners in Venezuela shall be governed by laws other than those under which Venezuelans themselves live, and that the Government shall be as an insurance company against real or imaginary losses from *force majeure*, and profoundly immoral it would be, as well, to advocate the doctrine that the state is responsible for acts of revolutionists.

Foreigners should be interested in the preservation of peace and public order, and they have numerous ways of contributing thereto without intervening in the politics of the country. But the day when the state is made responsible for the damages mentioned will see foreigners grow indifferent to the continuance of public peace, aye, and even become eager to foment revolution, as a means of acquiring by trumped-up claims what they might not be able to obtain by means of honest labor.

The honorable Commissioner for Italy seems unduly preoccupied as to the future. In the future the foreigner in Venezuela will live as he has in the past—under the constitution of the country, which establishes that the nation has no more or greater obligations toward them than it has toward its own citizens, according to the laws of the land—as the Venezuelans themselves live, who know very well that under the law they have no right to claims for damages committed by revolutionists.

I am confident that the honorable umpire, abiding by his decision, will reject the claim of Guastini as one based on acts of revolutionists.

RALSTON, *Umpire:*

The above case has been referred to the umpire upon difference of opinion between his honorable associates relative to an allowance for damages committed by insurgents during the recent revolution.

The questions presented in this respect are the same as those presented by the recent case of Salvatore Sambiaggio, No. 13,[a] in which the umpire reviewed in extenso the subject of responsibility of the Government for revolutionary damages in the case of unsuccessful revolution. In the present case, as before, the honorable Commissioner for Italy has presented a learned and able exposition of his views, which exposition has received the careful and respectful consideration of the umpire. He is, however, unable to change the views then expressed, but feels obligated to discuss briefly some of the fundamental positions taken on behalf of Italy.

The honorable Commissioner for Italy rests his opinions largely upon the assumed inequity of a refusal to require the Government to pay such revolutionary damages. The subject was fully investigated by the umpire in the former opinion, in addition to which discussion he desires now to call attention to article 21 of the treaty of 1892 between Italy and Colombia, which reads as follows:

It is also stipulated between the two contracting parties that the Italian Government will not hold the Colombian Government responsible, save in the case of

[a] See p. 666.

proven fault or negligence on the part of the Colombian authorities or of their agents, for injuries occasioned in time of insurrection or civil war to Italian citizens in Colombian territory, through acts of rebels or caused by savage tribes beyond the control of the Government.[a]

The foregoing sufficiently indicated the opinion of the Italian foreign office, and, in exact accord as it is with the opinion he expressed in the Sambiaggio case (as well as with a fair interpretation of the Italian-Venezuelan treaty of 1861, as pointed out in the case mentioned), confirms the ideas of the umpire; for had Italy believed such a clause inequitable and unjust to her subjects that enlightened and cultivated nation would never have solemnly ratified a treaty with Colombia, situated as it was and is like Venezuela, containing such a provision.

It is worthy of note that, according to the opinions of nearly if not quite all the umpires now in Caracas in the various Commissions, there exists no legal responsibility on the part of Government for the acts of unsuccessful revolutionists. Such is the view of the umpire of the English and Netherlands Commission,[b] of the German Commission,[c] and, as it appears, of the Spanish Commission.[d] Furthermore, it is the opinion of the umpires above referred to (save that of the Spanish Commission, possibly) that such claims are inequitable. It is true that the umpire of the German Commission, influenced by a construction of his protocol which this umpire can not conscientiously follow, has allowed (but within strict limits) certain claims of the character in question. It is also true that the umpire of the Spanish Commission, notwithstanding his apparent belief as to their illegality, has granted claims of this nature, considering the objections raised thereto by Venezuela as "technical," and therefore opposed to the protocol. This view the present umpire is unable to accept, believing as he does that an objection going to the foundation of the right to recover can not be regarded as technical. In addition to the Commissions above named, the American Commission has already indicated[e] that it would deny the right to recover for claims of this nature. Nothing is said above about the decision of the umpire of the French Commission, as, according to information furnished, the reasons for his decision were not given and the particular facts are unknown.

To the suggestion that Italy is entitled to the benefit of the "most-favored-nation" clause contained in the protocol, and that she has been deprived of it—a point argued at length and ably—it only remains to add that Italy obtained from Venezuela a protocol, certainly so far as this discussion is concerned, more favorable than those given other nations, for while (to illustrate) under the German protocol Venezuela admitted its liability—

in cases where the claim is for injury to or wrongful seizure of property, and consequently the Commission will not have to decide the question of liability, but only

---

[a] It appears that by an exchange of notes, dated October 27, 1902, between the minister of Italy in Bogotá and the Colombian minister of foreign affairs, it was understood that if other countries were granted *by Colombia* damages for acts of revolutionists or savage tribes *Colombia* would afford the same relief in favor of Italians. ("Trattati e Convenzioni fra Il Regno d'Italia e gli altri Stati.") This does not affect the recognition by Italy of a just principle, and, furthermore, in the case of Venezuela, she has accorded no more (or even as much) to other nations as to Italy. (Note by umpire.)

[b] Pages 350 and 896. [c] Page 549. [d] Pages 923, 931. [e] See p. 35.

whether the injury or the seizure of property were wrongful acts, and what amount of compensation is due,

in the Italian protocol Venezuela admitted its—

liability in cases where the claim is for injury to *persons and* property, and for wrongful seizure of the latter, and consequently the questions which the Mixed Commission will have to decide in such cases will only be: (*a*) Whether the injury took place or whether the seizure was wrongful; and (*b*) if so, what amount of compensation is due.

The French protocols contain no similar admission.

It is true that there have existed differences of opinion among umpires as to the responsibility of Venezuela for acts of unsuccessful revolutionists; but such differences of opinion, relating as they do to questions of international law or of the construction of protocols, can not be said to have any relation to a "most-favored-nation" clause obligatory upon Venezuela, which nation has apparently given Italy all she promised. These opinions may be studied to advantage, but they are not protocols, nor are they "treatment," within the meaning of the Italian-Venezuelan agreement.

It is greatly urged that the decision in the Sambiaggio case rested largely upon the meaning of the word "injury," and that the word "danni," used in the Italian version of the protocol, has a vastly different meaning. To this observation several answers are to be made. The text of the protocol is in English and Italian. It was the result of long negotiations between the representatives of England, Germany, and Italy on the one hand, and Mr. Bowen, Venezuela's representative, on the other. These negotiations were carried on almost altogether in English, and the drafts (afterwards becoming protocols) were in English. It is therefore evident that the basic language is English, and in case of difference of translation resort should be had to it.

But if this were not so, no difficulty would arise. We must conceive that the language employed, used as it was in a document in a sense legal, is to be interpreted with some regard to law. Examinations of articles 1151–1152 of the Italian Civil Code, with reference to "danni," "quasi delitti," shows that:

1151. Any act of man which results in damage to others obliges the one through whose fault the damage occurred to indemnify therefor.

1152. Every one is responsible for the damage which he has occasioned, not only by his individual act, but also by his own negligence or imprudence.

Careful examination of these words descriptive of "danni" will fail to show any difference between its significance where used in a legal way, and that of the word "injury" similarly employed, for there always exists the idea of responsibility only for acts with which one has some association, physically or by intendment of law.

Furthermore, if difference exist, it should be settled in favor of the party obligated, as pointed out under other conditions in the Sambiaggio case.

Although the umpire has the highest respect for the opinions of the Institute of International Law, which are referred to by the honorable Commissioner,[a] he does not discuss them specifically, as the principles covered by the citation made by him have received the attention of the umpire at great length, so far as they may be esteemed pertinent to the present case.

[a] Annuaire de l'Institut de Droit International, Vol. XVIII, p. 254 (1900).

The claimant demands 150 bolivars for having paid double license to the revolutionary authorities in 1902 and 1903. The facts in connection with this item appear to be as follows:

The claimant paid—

		Bolivars.
To the revolutionists:		
Apr. 1, 1902.	For second quarter of 1902	50
July 16, 1902.	For third quarter of 1902	50
Mar. 10, 1903.	For first quarter of 1903	50
To the Government:		
Jan. 1, 1902.	For first quarter of 1902	50
Mar. 24, 1903.	For the entire year of 1902 and first quarter of 1903	250

It appears from the receipts evidencing the foregoing that during the period named the claimant was a merchant of the fifth class at El Pilar, and subject to annual license of 200 bolivars, payable quarterly.

It is impossible to grant the claim in the manner presented. If the taxes were wrongfully exacted by the revolutionary authorities the Government can not be required to refund them.

But the claimant apparently has a ground of recovery founded upon another principle. We are justified in believing from the evidence in the case that during nine months of 1902, and at least to March 10, 1903, the revolutionary authorities were in possession of El Pilar. The claimant was therefore authorized, and we may presume compelled, to pay them the license fees which would have been payable to the legitimate authorities had they controlled the town. In fact, without such payment or some other, he could not have gained his livelihood as a merchant. A payment to them discharged (at least so far as the "expediente" informs us) his obligations toward his municipality. For him in his local relations the revolutionary authorities were the Government. They constituted his municipal government de facto.

We learn from Bouvier's Law Dictionary (Rawle's edition, title de facto) that:

> Where there is an office to be filled, and one acting under color of authority fills the office and discharges its duties, his actions are those of an officer de facto, and are binding on the public. 159 U. S., 596. An officer in the actual exercise of executive power would be an officer de facto, and as such distinguished from one who, being legally entitled to such power, is deprived of it—such a one being an officer de jure only. * * * An officer de facto is prima facie one de jure. * * * An officer de facto is frequently considered an officer de jure, and legal validity allowed his official acts.

Money paid, therefore to the de facto authorities in the shape of public dues must be considered as lawfully paid, and receipts given by them regarded as sufficient to discharge the obligations to which they relate. Any other view would compel the taxpayer to determine at his own peril the validity of the acts of those exercising public functions in a regular manner.

We must apply to the facts before us the principle which would be invoked if the acting jefe civil had been illegally appointed or elected by legal authorities acting improperly. In such case no dispute could possibly exist as to the right of the taxpayer to be protected by payment to such illegal but acting officer.

Says Morawitz on Corporations, sec. 640:

> In order to secure the peaceful and orderly government of the community, the rule has been established that the right of a de facto public officer to exercise the powers of his office can not be investigated in a collateral proceeding. It must be determined once for all times in a direct proceeding to oust the officer.

In Norton *v.* Shelby Co., 118 U. S., 425, the Supreme Court of the United States held that where an office exists under law, it matter not how the appointment of the incumbent is made, so far as the validity of his acts are concerned. It is enough that he is clothed with the insignia of the office and exercises the power and functions.

Let us add another consideration. During the period for which taxes were collected by the revolutionary government, the legitimate government (as we may believe from the "expediente") performed no acts of government in El Pilar. It did not insure personal protection, carry on schools, attend to the needs of the poor, conduct courts, maintain streets and roads, look after the public health, etc. The revolutionary officials, whether they efficiently performed these duties or not during the time in question, displaced the legitimate authorities and undertook their performance. The legitimate government therefore was not entitled at a later period to collect anew taxes once paid to insure the benefits of local government which it was unable to confer.

We need not question the obligation of taxpayers to pay to the rightful authorities taxes accrued but not paid during illegitimate government. That does not enter into this discussion.

If the opinion above expressed need support from precedent and the views of others, it is at hand. A situation analogous to that now presented arose out of the holding of the town of Castine, near the eastern extremity of the State of Maine, by the British during the war of 1812 between the United States and Great Britain. That eminent jurist, Justice Story, in passing upon the questions presented to the United States Supreme Court, said (U. S. *v.* Rice, 4 Wheaton, 246):

> The single question arising on the pleadings in this case is, whether goods imported into Castine, during its occupation by the enemy, are liable to the duties imposed by the revenue laws upon goods imported into the United States. It appears by the pleadings that on the 1st day of September, 1814, Castine was captured by the enemy and remained in his exclusive possession, under the command and control of his military and naval forces, until after the ratification of the treaty of peace, in February, 1815. During this period the British Government exercised all civil and military authority over the place, and established a custom-house and admitted goods to be imported according to regulations prescribed by itself, and, among others, admitted the goods upon which duties are now demanded. These goods remained at Castine until after it was evacuated by the enemy, and, upon the reestablishment of the American Government, the collector of the customs, claiming a right to American duties on the goods, took the bond in question from the defendant for the security of them.
>
> Under these circumstances we are all of opinion that the claim for duties can not be sustained. By the conquest and military occupation of Castine the enemy acquired that firm possession which enabled him to exercise the fullest rights of sovereignty over that place. The sovereignty of the United States over the territory was, of course, suspended, and the laws of the United States could no longer be rightfully enforced there or be obligatory upon the inhabitants who remained and submitted to the conquerors. By the surrender the inhabitants passed under a temporary allegiance to the British Government, and were bound by such laws, and such only, as it chose to recognize and impose. From the nature of the case no other laws could be obligatory upon them, for where there is no protection, or allegiance, or sovereignty, there can be no claim to obedience. Castine was, therefore, during this period, so far as respected our revenue laws, to be deemed a foreign port, and goods imported into it by the inhabitants were subject to such duties only as the British Government chose to require. Such goods were, in no correct sense, imported into the United States. The subsequent evacuation by the enemy and resumption of authority by the United States did not and could not change the character of the previous transactions. The doctrines respecting the *jus postliminii* are wholly inapplicable to the case. The goods were liable to American duties when imported, or not at all. That they were not so liable at the time of importation is clear, from what

has been already stated, and when, upon the return of peace, the jurisdiction of the United States was reassumed, they were in the same predicament as they would have been if Castine had been a foreign territory, ceded by treaty to the United States, and the goods had been previously imported there. In the latter case there would be no pretense to say that American duties could be demanded, and, upon principles of public or municipal law, the cases are not distinguishable. The authorities cited at the bar would, if there were any doubt, be decisive of the question. But we think it too clear to require any aid from authority.

American statesmen have since followed the precedent. For instance, in 1873, Secretary Fish wrote to Mr. Nelson (Wharton's Digest of Int. Law, vol. 1, sec. 7, p. 29):

The obligation of obedience to a government at a particular place in a country may be regarded as suspended, at least, when its authority is usurped, and is due to the usurpers if they choose to exercise it. To require a repayment of duties in such cases is tantamount to the exaction of a penalty on the misfortune, if it may be so called, of remaining and carrying on business in a port where the authority of the government had been annulled. * * * Since the close of the civil war in this country suits have been brought against importers for duties on merchandise paid to insurgent authorities. Those suits, however, have been discontinued, that proceeding probably having been influenced by the judgment of the Supreme Court adverted to. (U. S. *v.* Rice, 4 Wheaton, 246.)

Without multiplying at length possible citations, reference is also made to a letter to like effect from Mr. Cass, Secretary of State, to Mr. Osma, dated May 22, 1858. (Wharton's Int. Law Digest, vol. 1, sec. 7, p. 28.)

Perhaps the latest similar instance in American international affairs is to be found discussed in Foreign Relations for 1899, and refers to an attempted second collection by the Government of duties at Bluefields, Nicaragua, a first payment having been made to a revolutionary government. After an extended correspondence, and pursuant to instructions from Mr. Hay, Secretary of State, the American envoy extraordinary and minister plenipotentiary, W. L. Merry, signed an agreement for settlement, providing, among other things, that—

The deposit (conditional deposit for second payment made by merchants) shall be paid by Her Britannic Majesty's consul to the authorities of the custom-house if it is decided that that Government has had the right to demand the payment claimed, or to its owners, the American merchants, if it is decided that the payment made to the revolutionists of Bluefields was legal for the reason that they pretend that the revolutionary organization of General Reyes, between February 3 and 25, 1899, was the government de facto. (For. Rel., 1899, p. 576.)

It will be seen that the only question for consideration was the character of the government. In the pending case its de facto character is sufficiently established, and therefore the second payment, made, as satisfactorily appears, under circumstances of compulsion, must be returned to the claimant.

In this case an award will be signed for 1,517 bolivars, including amounts taken by the Government, for which receipts were or were not given, and the second payment of taxes above referred to, with interest, and refused for acts of revolutionists, no want of diligence on the part of the Government having been shown.

CASES OF REVESNO, BIGNOSO, STIZ, MARCHIERO, AND FANTI.

Government is not to be held liable for acts of revolutionists unless negligence be clearly apparent or proven by claimant, the more so when claimants have never appealed to it for protection.

RALSTON, *Umpire:*

The above cases, all from Colonia Bolívar, came to the umpire on difference of opinion between the honorable Commissioners for Italy and Venezuela.

It is urged on behalf of Italy that the above cases come from a distance not greater than 30 miles from Caracas, that the takings were all by Matos revolutionists under command of General Rolando, and occurred during the months of May and October, 1902, and January, February, March, April, May, June, and July of 1903, happening at Custire, El Bautiamo, Chispita, and Colonia Bolívar; that by reason of their nearness to Caracas they could have been prevented by the exercise of proper diligence, and that therefore these cases are exceptions to the general rule laid down in the Sambiaggio case, No. 15,[a] and affirmed in the Guastini case, No. 225.[b]

A study of these cases will show that the burden of proving want of diligence rests upon the claimants. In the "expedientes" now under consideration not a word of affirmative proof is furnished to show negligence on the part of the Government. The umpire is aware of the fact that for several months the revolutionists remained within a short distance of Caracas without being dislodged by the Government, or perhaps without a serious attempt being made to dislodge them. But he is also aware that during that time war was being actively prosecuted over large areas of the country, while the external relations of Venezuela were in a state of danger. He is unable, and if furnished with data would doubt his right, to judge as to the military or political considerations which made military activity or concentration more necessary in one portion of the country than another.

Furthermore, he knows nothing of the relative strength of the forces of General Rolando and of the Government in this neighborhood or their advantages of location. He only knows that when the tension was apparently released elsewhere the forces of Rolando were attacked and ultimately defeated.

The claimants, so far as the evidence shows, never made any appeal to the Government for protection, as it was their right to do if they desired to obtain it, and although such appeal, if made, might have had an important effect upon the question of liability.

In view of the foregoing an order dismissing said cases will be signed.

GUERRIERI CASE.

Government will not be held responsible for results of legitimate acts of warfare.

RALSTON, *Umpire:*

The above case has been presented to the umpire upon difference of opinion existing between the honorable Commissioners for Italy and Venezuela.

---

[a] See p. 666. [b] See p. 730.

The larger part of the claim is for damages committed by unsuccessful revolutionists, and, resting upon the principles discussed in the Sambiaggio and Guastini cases,[a] can not be given further consideration.

A further claim of 225 bolivars is made because of the fact that the Government steamers bombarded the town of Puerto Cabello, where claimant's property was situated, a shell in part destroying the walls of claimant's house. It is urged that the bombardment was without reason or purpose, and therefore the Government should be held responsible for wanton destruction of property. This principle was adopted by the Commission in the case of Eugenio Barletta, consul at Ciudad Bolívar,[b] and, in the opinion of the umpire, correctly adopted, it then appearing that the Government vessel had thrown 1,400 or 1,500 shells into the town without directing its attack upon the quarters of the revolutionary troops, without any supporting force to make the bombardment effective, and when the city had not broken out in insurrection, but a body of troops had defaulted in their allegiance.

Nothing like this is proven in the present case. We are simply informed that shells were thrown, one of them injuring claimant's property. Upon this statement of a single fact, a state of war existing, the umpire is not justified in assuming that the act was needless or unjustifiable. The legal presumption would be in favor of the regularity and necessity of governmental acts.

A decree of dismissal will therefore be signed.

Miliani Case.

(By the Umpire:)

In cases of double citizenship neither country can claim the person having the same as against the other nation, although it may as against all other countries.

However such matters may be treated by the diplomatic branch of a government, an international commission can only accord damages to a citizen or subject of a claimant country—not to the country itself, and taking no account of offenses to a nation as such.[c]

Agnoli, *Commissioner* (claim referred to umpire):

Article 4 of the Italian Civil Code declares that "the father being a citizen, the son is likewise a citizen."

The constitution and the civil code of Venezuela declare, instead, that all who are or may be born on Venezuelan soil are Venezuelans. From which it follows that sons of Italians born in Venezuela are Italian citizens according to the law of Italy and Venezuelans according to the law of Venezuela. In the event of conflict between the two provisions, would Italy have the right to protect individuals finding themselves in the juridical condition above mentioned, and would the Mixed Commission be competent to consider the claims of such according to the protocol of February 13, the principles of equity, and the principles of international law?

To both questions I answer in the affirmative. The right of Italy to accord diplomatic protection to the sons of her citizens, wherever born, was expressly reserved by the Royal Government, so far as con-

---

[a] See pp. 666 and 730.

[b] No written opinion. See de Lemos case, p. 319.

[c] Same doctrine discussed in British-Venezuelan Commission, p. 438.

cerns Venezuela, in a note of the royal chargé d'affaires at Caracas, dated March 13, 1873, by which protest was made against the provisions of the Venezuelan act of February 14 of that year.

The sons of citizens are citizens by the national law, and subsequent legislation by another State can not deprive them of this quality or minimize the rights accruing to them under the former act.

The imposition of a nationality on a preexisting one is a fact juridically abnormal, and certainly can not in any manner vitiate the original one.

We must distinguish between these two facts: The acquisition of the new nationality and the loss of the old one. The first depends exclusively upon the foreign law; the second exclusively upon the home law, and it is clear that the denationalization of an Italian is not to be sanctioned by any but Italian law.

Our law grants the citizen full and absolute liberty to become a foreigner, but insists that the change shall be of his own spontaneous choice. We can not, therefore, consider a foreigner him upon whom a foreign law imposes a new nationality, when it does not appear that he has lost or relinquished his Italian nationality, and we can not abandon him.

Were we to accept such a rule we would arrive at excessive consequences, since we would thereby subject ourselves without discussion to the provision of any foreign law whatever operating upon our citizens in this respect, however illiberal and contrary to general custom it might be in principle.

The consequence being thus illogical and absurd, the principle from which it flows must be erroneous and unacceptable.

Granting that the local law may impose another nationality on the sons of Italian subjects born in Venezuelan territory, it can not thereby deprive them of the quality of Italian citizenship. In regard to this very question the court of Lyons laid down this maxim:

> Si l'acquisition d'une nationalité est régie par la loi du pays où elle est obtenue, la perte de la nationalité l'est par celle du pays auquel appartenait l'individu naturalisé.

If, therefore, loss of nationality does not take place under the conditions above stated, neither can Italy lose the right to protect the sons of citizens born on foreign soil. If such were not the case, by the operation of special Venezuelan laws all foreigners here residing might be declared citizens of Venezuela, in which event claims would cease to exist, and there would no longer be need of diplomatic representation.

Now there can be no doubt that the limits of diplomatic action are fixed by international law, and can not be restricted by internal legislation.

This right being established, there logically flows therefrom the admissibility of claims of persons coming under this head before the Mixed Commission.

This Commission, be it understood, is governed by the terms of the protocol, which, from our point of view, has referred to it all classes of Italian claims, without distinction or exception.

Why should the Commission deem itself incompetent to pass upon them? Is it not a tribunal which was constituted and accepted by the mutual agreement of both Venezuela and Italy? What motive is there for rejecting the consideration of claims of persons having two nationalities, and therefore entitled to the protection of both countries?

None, from the point of view of equity, so the claim be just and well founded. There would only remain the elimination of technical exceptions, but this is already accomplished by the protocol.

The tribunal of arbitration is therefore competent, even in the case where the incubus of a dual nationality bears upon the claimant, because under no circumstances may the local citizenship outweigh the other.

But we may go further. It seems to me that, as between the two nationalities enjoyed by Venezuelan-born sons of Italians, that of Italy ought, for various reasons, to prevail. There is no doubt that the more liberal laws do not regard the mere accident of birth in any country as being of itself sufficient to convey citizenship, but hold, on the contrary, that it should be determined with due regard to family. The contrary principle, sanctioned by various legislations, especially the American (with the exception of the United States, the Supreme Court of which favors the view (based on the act of April 9, 1866, Rev. Stats., U. S., sec. 1992) that children born in the union of foreign parents who have not been naturalized are themselves foreigners), constitutes an abandonment of the rules which inspired the wisdom of the Roman legislator and are a return to the now-condemned system of the middle ages, adopted for political reasons and expediency, but carrying within itself something contrary to the order and peace of the family, in that a father might have ten sons, each of a different nationality. While the ties of family rest on sacred and indissoluble foundations, which are the basis of our social order, there is not always a moral bond, a tie of affection, or a mutual interest between the land and the person born therein.

Cogordan (p. 25) observes:

> Il était logique, en effet, sous l'ancien régime, d'attribuer la qualité de français à quiconque était né sur le sol de France; puisque la nationalité n'était que la soumission au Roi; mais quand parut le sentiment de la race, l'idée de la patrie française existant en elle-même, abstraction faite du Roi, et résidant dans l'ensemble des français, il était juste de revenir à la filiation, puisque c'est par la famille qu'on acquiert les qualités physiques et morales qui rattachent l'homme à une race et à une patrie.

The fact of birth in any given country may be a mere accident.

Fiore (par. 330 et seq. of Vol. I of "Diritto Internazionale Privato"), examining the question of a double nationality coming before a tribunal of a neutral State—that is, a tribunal which, like the present Mixed Commission—is not to apply any particular law on the question of citizenship, but determine that of a given person, holding to the principles of international law as well as to the general principles of common law, concludes that such tribunal should admit that "a legitimate son acquires by birth the nationality of his father (Vol. I, p. 334), and adds (p. 335, par. 333):

> The principle which bestows upon the son the nationality of the father is derived from Roman law, and rests on the natural tendency of the individual, which warrants the assumption that each desires the citizenship of his father. The oneness and homogeneity of life, of the affections, of the sentiments of family, all render such assumption reasonable, founded as it is on the ties of blood, and surely more rational than that which would attribute to the son the nationality of the soil on which he was born, "*jure territorii.*"

The court of cassation of Belgium, founding itself on the adage, "*Nasciturus pro nato habetur quando de ejus commodo agitur,*" decided that the son of a person who changed nationality after the conception, but before the birth, of said son, may invoke the nationality which his

father had at the time of his (the son's) conception, and thereby admitted that citizenship should be considered as a personal right of the individual from the moment of his conception.

According to this ruling the Venezuelan-born sons of Italians first possessed Italian citizenship, and at birth acquired the Venezuelan; but the original and prevailing one, the one to be considered by the Commission, which is not to apply either Italian or Venezuelan laws, but, on the contrary, reject exceptions based on local laws, is surely the Italian.

The Mixed Commission, resting upon sound principles of international law, should hold inefficient the law which would impose citizenship when not only is there no act tending to show a voluntary renunciation of the original nationality, but everything showing a preference for it, as in the case of claimants, who, having a dual citizenship, in fact, choose the Italian, as clearly evidenced by their appearance before this tribunal demanding indemnity due them from Venezuela through the intermediary of the royal Italian legation.

Bearing in mind that the courts of the Republic dispense justice with no less impartiality than does the Commission, and considering as well that while the sentences of the former are susceptible of immediate execution, those of the latter are subject to some years' delay and to the fluctuations of Venezuelan custom-house receipts, it is evident that a claimant having two nationalities who turns to this tribunal rather than to the local courts for justice in spite of all delay, impliedly testifies his choice for Italian nationality. Various reasons, both in law and in equity, exist why this Commission should accept well-founded claims of Venezuelan-born sons of Italians. But the strongest, to my mind, is that, the Italian nationality of the claimants having been established, the nationality of their claims can not be denied, and that therefore they should be treated according to the provisions of article IV of the Washington protocol of February 13 of this year.

Claims of this character have been received and adjudicated in the French-Venezuelan Commission, before which the question of nationality of sons of French citizens born in Venezuela was not even raised. Our own are, therefore, under Article VIII of the above-mentioned protocol, entitled to equal treatment.

AGNOLI, *Commissioner* (additional opinion):

With one or two exceptions, in which damages for which claims were presented to this Commission were suffered in person by Venezuelan-born sons of Italians, all claims of persons finding themselves in regard to citizenship in the condition above mentioned were by them presented as representatives of deceased fathers, who had themselves suffered the losses on which the claims were based and about whose citizenship there was and could be no question.

The undersigned maintains that Venezuelan-born sons of Italians are competent to present claims before this Commission, not only because of the reasons assigned in the first part of this memorial, but also because said claims are of Italian origin, since in nearly all cases indemnity is asked for damages suffered by persons unquestioningly recognized as Italian by their heirs.

The gist of the question at issue, therefore, lies in deciding whether the original nationality of the claim shall be taken as the fundamental and decisive reason for its admission to the Commission.

The Commissioner for Italy feels no hesitancy in taking the affirmative on this point, being impelled thereto by every consideration of law, of logic, and of equity. The lack of time and the amount of work before him compel him to sum up briefly as follows:

The protocol makes no restriction as to the presentation of claims. To restrict the range of that instrument would be equivalent to an infringement of its spirit.

All requisitions, acts of personal violence, forced loans, illegal imprisonment—in short, all damages inflicted upon an Italian by the Venezuelan Government, or by its agents, or committed against an Italian on Venezuelan soil, when not characterized as acts of private malice, constitute an offense against the Italian Government, because by their nature and repeated occurrence they take on a political character and establish the right of intervention, and that of exercising a protective action—that is to say, a diplomatic action.

If to-morrow an Italian is killed in Venezuela, or his private interests are damaged, under circumstances which establish lack of diligence or prevention on the part of the Venezuelan Government, the Kingdom of Italy intervenes and claims. Would it be admitted in the course of diplomatic negotiations that Venezuela might object that the murdered man had no heirs, or that his heirs were born in Venezuela, and by this quibble escape the granting of adequate satisfaction? Certainly not, because in the person of the citizen the nation has been offended. Did the United States stop to inquire whether there were any heirs of the American citizen assassinated by brigands in Asia Minor when they demanded and obtained an indemnity of $100,000 from the Turkish Government?

Did France undertake to determine the nationality of the widows or children of the Italian operatives murdered at Aigues-Mortes, when an indemnity was awarded them on the demand of the Italian Government?

Now, should an exception, which would not be admitted, and I believe would not even be offered in the course of a simple convention between governments, be accepted before a mixed commission? No, because the mixed commission was constituted for the purpose of giving effect in its results to the diplomatic action which preceded it.

The Washington protocols were not drawn with a view to restricting the rights of claimant governments, but to affirm them in the solemnity of an international agreement.

Let us suppose that a principle contrary to the foregoing is admitted; what will be the consequences? The first would be that every debtor government would seek to retard to the utmost the fulfillment of its obligations, and each passing year would see diminished the amount of indemnity to be paid. Each death of a claimant leaving no heirs, or leaving heirs born on foreign soil having laws like those of Venezuela, would mean the virtual annulment of the claim. We would therefore see negligence compensated, or, what is worse, encouraged.

But let us consider another result, and as a practical case, that of the claim of Poggioli recently submitted to this Commission.

The firm of Poggioli Brothers (and I do not enter here into any consideration of the value of the evidence) suffered heavy damages through the operations of governmental agents. The firm was composed exclusively of Silvio and Americo Poggioli, brothers, both Italians, born on Italian soil. Among the damages for which claim is made was the

wounding of Silvio, who remains a cripple, and the murder of Americo, whose heirs, associated in the claim and forming now part of the existing firm of the same name, are the widow, daughter of an Italian but born in Venezuela, and several minor children, likewise born in this Republic.

The claim of Silvio Poggioli, for himself and his heirs, may not be denied for reasons of nationality, *because, though badly wounded, he was not killed.* The share of the claim demanded for Americo and his family may be rejected, and why? Because Americo was not merely wounded, he was killed, and to his widow and children, born in Venezuela, this Commission should award nothing. It would have perhaps been better to suppress Silvio as well; then there would be no occasion to discuss the Poggioli claim.

If the Commissioner for Italy could believe that a principle contrary to the one he is advocating is to prevail in this Commission, he would consider it his duty to advise the heirs of Americo Poggioli and all other claimants analogously situated to withdraw their claims, so as to leave a way open to future diplomatic action on the part of his Government.

The case is quite different when the claimants have voluntarily assumed Venezuelan nationality, either by naturalization or marriage, acts in which may clearly be seen a deliberate renunciation, excepting, however, the case of Berti-Nieves, in which the marriage of the Italian claimant to a Venezuelan was not solemnized until after the stipulation of the protocol at Washington.

It is an elementary rule in logic that any principle which leads to unjust or absurd consequences must itself be deemed unjust and absurd.

I invite the attention of my Venezuelan colleague and of the honorable umpire to decision No. 34 of the American-Venezuelan Mixed Commission of Revision in the case of Albino Abbiatti,[a] who suffered damages while he was an Italian citizen, and, being subsequently naturalized as an American citizen, presented his claim before that Commission, which in its just sentence enunciated these two principles: "The infliction of a wrong upon a State's own citizen is an injury to it," and that "in claims they must have been citizens at least when the claims arose."

No opinion was filed by Doctor Zuloaga.

RALSTON, *Umpire:*

The above-entitled claim is referred to the umpire upon difference of opinion between the honorable Commissioners for Italy and Venezuela.

The claim is based upon "vales" or receipts given by certain chiefs in 1871 and 1872, and as well upon seizures said to have been made by revolutionary and governmental chiefs in 1899 and 1900. The claim for the events of 1871 and 1872 during his lifetime belonged to Michele Miliani, an Italian subject, who was married to Matilde Miliani May 29, 1872, she then being a Venezuelan citizen. He died in Valera, Venezuela, in 1890. Their children were apparently born in Venezuela, which, by legal presumption, may be considered still their residence, though no proof is offered on the subject. The widow has always lived in this country.

---

[a] Moore, p. 2347.

It is urged against the claim, first, that the earlier part is barred by prescription, thirty-one years having elapsed since its origin, and it never having been presented to the Venezuelan Government; and in addition, second, that the widow and children, claiming as of their own right for the later damages and by inheritance as to the earlier ones, are to be regarded as Venezuelan citizens. The latter objection will be discussed.

So far as the rights of the widow are concerned, the questions affecting them were disposed of in the case of the estate of Sebastiano Brignone [a], wherein it was held that in the event of conflict of laws the status of a woman born in Venezuela, married here to an Italian, and becoming a widow and always residing here, was to be determined by the laws of Venezuela, the land of her domicile, which declared her to be Venezuelan. The condition of the widow in this case being identical, her claim must be rejected for want of jurisdiction, but without prejudice to her other remedies.

The case of the children deserves careful consideration. The Italian civil code provides:

ART. 4. È cittadino il figlio di padre cittadino.

The Venezuelan constitution provides:

ART. 8. Los venezolanos lo son por nacimiento ó por naturalización.
(a) Son venezolanos por nacimiento;
1. Todas las personas que hayan nacido ó nacieren en el territorio de Venezuela, cualquiera que sea la nacionalidad de sus padres.

It thus appears that a conflict of laws again exists, Italy claiming her nationality for the children of her subjects, without limitation as to the location of their birth, and Venezuela claiming as her citizens those born within her territory, irrespective of the nationality of their parents. Which should control?

England, the United States, Portugal, and nearly all the Central and South American States accept the rule followed by Venezuela, while Germany, Austria, Hungary, France, Sweden, and Switzerland follow broadly the rule adopted by Italy. Either theory has, therefore, very respectable support.

It is urged on behalf of the Italian rule that Venezuela should not be deemed to have power perforce to confer nationality irrespective of the desires of the person concerned; that a child is Italian not merely from the time of birth but from the time of conception, and that the Venezuelan law, operating from birth, can not change a nationality already established.

The doctrine that citizenship is fixed by conditions existing from the moment of conception, while occasionally referred to by courts and writers, is not so far established by reason or authority in international disputes as to induce the umpire to largely regard it. To base citizenship upon the conditions of such an uncertain moment would be to introduce into the international law an element of doubt.

In the umpire's opinion, therefore, the natural moment for determining the commencement of citizenship is that of birth, both laws from that moment receiving such effect as they may deserve. Assum-

[a] See p. 710.

ing this position, it can not be contended that Venezuela, more than Italy, has given an enforced citizenship.[a]

In discussing the rule that place of birth determines citizenship Cogordan (La Nationalité, p. 39) says that "the eminently practical spirit of the English Government has inspired a wise solution," in that Lord Malmesbury, in writing to Lord Cowley, ambassador at Paris, on March 13, 1858, said that if England recognized as English, children born in England of foreign parents she did not pretend to protect them as such against the authorities of the parents' country, which claimed them, above all when they voluntarily returned to that country; in other words, the Frenchman born in England would be protected by England in Germany, Italy, everywhere, in fact, except in France, where he could be legally called to military service.

Restating the same rule as existing in certain States, Tchernoff (Protection des Nationaux Résidant à l'Étranger, p. 470) says:

> Un individu à double nationalité n'en aura qu'une dans le territoire de chacun des États qui le considèrent comme leur sujet. C'est la pratique de l'Angleterre et de la Suisse.

It follows from the foregoing that while the children of Miliani may with absolute legal propriety be recognized as Italians in Italy, or by Italy in any country other than Venezuela, in this country, and, as a consequence (following the decisions cited in the Brignone case, and accepting the domicile as furnishing the rule in case of conflict), before this tribunal, they must be considered, for the purposes of this litigation, as Venezuelans.[b]

The umpire is the more disposed to the rule above indicated because certain equities in the case favor it. Miliani came to Venezuela some

---

[a] On pourrait élever un doute sur la question de savoir si le bienfait attribué au fils né, dans notre royaume, d'un étranger non domicilié depuis dix ans, pourrait s'étendre aussi au fils conçu dans le royaume et né à l'étranger, en vertu du principe infans conceptus pro nato habetur, quoties de commodo ejus agitur. Nous sommes d'avis que le législateur ayant employé le mot nato, on ne peut étendre la disposition à l'enfant concepto, et que la fiction par laquelle on répute comme déjà né l'enfant seulement déjà conçu ne peut valoir dans tous les cas. Pourtant, si le père eût continué à tenir domicile dans le royaume après la naissance de l'enfant, et si la naissance à l'étranger pouvait être considérée comme un fait accidentel et de passage, la disposition de l'article 8 pourrait être appliquée. Le fait seul de la conception, quelquefois difficile à constater et susceptible de nombreuses contestations, ne peut par lui-même être suffisant pour fixer une qualité aussi importante que celle de la nationalité. Mais si, indépendamment du fait d'avoir été conçu, l'enfant avait été élevé et avait reçu l'éducation dans le royaume, les facilités de l'article 8, fondées sur les attractions instinctives pour les lieux où l'enfant se développe et passe son enfance, ne devraient pas être refusées, par le seul motif qu'il était accidentellement né à l'étranger pendant un voyage (1).

(1) Confr. Richelot, t. I, p. 115; Caen, 5 février 1813; affaire Montalembert. V. Émigré. (Note de M. Fiore.)

La même solution est donnée par la jurisprudence française. Il est admis, en effet, et enseigné que l'enfant né à l'étranger, de parents étrangers, ne pourrait se prévaloir des dispositions de l'article 9 du Code civil, bien qu'il eût été conçu en France: la maxime infans conceptus pro nato habetur, quoties de commodis ipsius agitur, n'étant point applicable dans ce cas, parce qu'il résulte, et du texte de l'article 9 et de la discussion au Conseil d'État, que c'est exclusivement à la naissance sur le sol français qu'est attaché le bénéfice dont il s'agit. Voir Zachariæ, édition d'Aubry et Rau, I^e^ partie, Chapitre IV, § 70, t. I^er^, note 1, p. 209, et les auteurs cités par les annotateurs.

P. PRADIER-FODÉRÉ.

(Fiore, Droit International Privé, livre I, pp. 113, 114.)

[b] The rule here laid down is that accepted by Bluntschli, who says (Droit Public Codifié, sec. 374):

"Certaines personnes ou familles peuvent exceptionnellement être ressortissants de deux états différents ou même d'un plus grand nombre d'états.

"En cas de conflit la préférence sera accordée à l'état dans lequel la personne ou la famille en question ont leur domicile; leurs droits dans les états où elles ne résident pas seront considérés comme suspendus."

time prior to 1871, and died in 1890 at the age of 56 years. He had married in 1872. His children were all born here, and, so far as appears, have never claimed Italian citizenship till now, or lived in Italy. It is scarcely to be supposed that they have any intention of living upon Italian soil. To declare them to be Venezuelans is not to deny them anything that they have ever felt in any essential way they possessed, and an option to choose Italian citizenship is scarcely to be inferred from the fact that their mother has seen fit in their names to file a claim before this Commission.

Another consideration may be added. Michele Miliani, the father, deliberately established his domicile and married in Venezuela, choosing that his children should there and under her laws first see the light of day. While he had not power to select the land of his own birth, he could control that of his children. In so far as a father may be considered as selecting the citizenship of his children he did so, and under all the circumstances of the case it seems proper they should abide the consequences of his actions.

The foregoing considerations make it unnecessary to discuss the question of prescription.

The umpire has not discussed the suggestion that the claim, largely at least, was Italian in origin and should be considered, even if not now Italian, because involving an infraction of international duty on the part of Veuezuela toward Italy which would survive even change of citizenship on the part of the individual claimant. It is sufficient to observe that all the considerations for or against a claim which appeal to the diplomatic branch of a government have not necessarily a place before an international commission. For instance, unless specially charged, an international commission would scarcely measure in money an insult to the flag, while diplomatists might well do so. On the other hand, commissions have and exercise jurisdiction over contract claims, while the diplomatic branch of government, although usually reserving the right, rarely presses matters of this nature. While it remains true that an offense to a citizen is an offense to the nation, nevertheless the claimant before an international tribunal is ordinarily the nation on behalf of its citizen. Rarely ever the nation can be said to have a right which survives when its citizen no longer belongs to it. Italy, save when her own pecuniary rights are affected, recovers nothing for her own benefit before a tribunal such as this, however much her own dignity may have been affected by the treatment of her subjects.

A decree may therefore be entered dismissing the claim, but without prejudice to such rights as the claimants may have elsewhere.

PETROCELLI CASE.

The Government is liable for loss from having so taken possession of property as to especially expose it to destruction, but not for damages incident to ordinary warlike operations.

RALSTON, *Umpire:*

This case is submitted to the umpire upon difference of opinion between the honorable Commissioners for Italy and Venezuela.

While the claim is for 45,000 bolivars, embracing a large number of

items, very few circumstances are so established by proof as to be worthy of consideration, and these only will be discussed.

It appears that the Government troops in the month of May, 1902, entrenched themselves in front of the claimant's dwelling house at a street corner in Ciudad Bolívar, and that as a result a battle raged around that house for five days, it being made the object of attack and being greatly damaged. It further appears that the same troops broke open the doors, smashed wardrobes, and helped themselves to property, but no satisfactory evidence is furnished as to the value of property so taken or injured. It seems fair to believe that the house was used in connection with the entrenchments. In addition, it is said that during the battle of last July five bombs were thrown, apparently by the Government troops or vessels, which entered this house and another, causing considerable damage. An expert valuation of the amount necessary to restore the dwelling house fixes it at 1,850 bolivars, and to repair a storehouse, belonging to the claimant and located elsewhere, at 100 bolivars.

The damages to the storehouse are rejected, as incident to the operations of war. The damages to the dwelling rest upon another principle. When the Government troops entrenched themselves in front of claimant's habitation and took possession they made it the object of the enemy's attack. They condemned it specially to public use. Claims for damages to it were taken out of the field of the incidental results of war, the Government having invited its destruction. The claimant's property was exposed to a special danger, in which the property of the rest of the community did not share. The Government's responsibility for its safe return was complete. The principle upon which such responsibility rests is above indicated, and is more at large set forth in 4 Moore, page 3718, Putegnat's Heirs, decided by the American-Mexican Commission formed under the treaty of 1868, which decision was recently followed in the case of the American Electric and Manufacturing Company *v.* Venezuela,[a] the opinion being presented by Doctor Paúl, in the American-Venezuelan Commission now sitting in Caracas.

Part of the damages caused to the dwelling house were from shells thrown by the Government during the battle of July, and, as incident to the usual operations of war, no recovery from them can be had.

An expert examination shows that the dwelling house can be repaired for 1,850 bolivars. Only so much of this amount can be paid as may be considered the result of the special use made of it by the Government. The evidence does not distinguish, and perhaps could not be expected to distinguish, clearly the damages caused by the two classes of acts—those involving and those refusing responsibility. The umpire, however, believes himself justified in holding responsibility to the extent of one-half of the amount claimed for damages to the dwelling house, or 925 bolivars.

---

[a] See p. 35.

TAGLIAFERRO CASE.

Responsible officers of the Government having had full knowledge of the claim from the beginning, the reclamation, although 31 years old, is receivable.
Where the reason for the application of the principle of prescription ceases, as in this case, prescription can not be invoked to defeat the claim.[a]
Illegal refusal of amparo by superior judge and procurador-general will sustain claim for denial of justice.

RALSTON, *Umpire.*

The above-entitled cause is referred to the umpire upon difference of opinion between the honorable Commissioners for Italy and Venezuela.

The claimant, an Italian subject, was, in 1872, a merchant of Tariba, doing a considerable business. On January 28 of that year, the general in chief of operations in the States of Mérida and Táchira issued an order of the collection of enforced exactions against a number of citizens of Táchira, requiring, among things, the collection from the claimant, by name, of 12 "morocotas," a morocota being the equivalent of an American 20-dollar gold piece, the order stating that those who should not make the payment "will be conducted to the prison, subject to the disposition of Gen. Manuel Pelayo."

Pursuant to the foregoing, the claimant was, on February 1, required to pay the money, but refused, electing to accept imprisonment. Immediately upon being imprisoned his petition for "amparo" or protection was presented to the superior judge, who, contending that the military power was superior to the civil, refused to grant amparo.

Immediately thereafter, and on February 5, the claimant addressed a petition to the procurador-general of the nation for the State of Táchira, setting up the foregoing facts, and praying that he might be set at liberty, and that the order depriving him of the same might be revoked. The procurador returned claimant's petition to him on February 6, authorizing him to apply again if he saw fit, producing documents showing that he was an Italian subject, without which requisite, he said, nothing could be done.

The duration of claimant's stay in prison is not fixed in the expediente, but, as on March 11 he prepared his proofs, we may presume that it did not exceed forty days at the outside. It does not appear that he paid the exaction.

The first question presented is one of prescription, more than thirty-one years having elapsed between the infliction of the injury and the presentation of the claim. In the Gentini case, No. 280,[b] the umpire sufficiently indicated the reasons why prescription could properly be invoked in international claims. It may be said that none of the reasons then adduced can be given effect in the pending case. Here the acts complained of were committed pursuant to the orders of the highest military authority of the State. The injured party at once appealed to the judicial authority, which denied relief, and then to the immediate representative of the nation, who, upon a subterfuge, refused his assistance. The responsible constituted authorities knew at all times of the wrongdoing, and if the complaint were baseless—an impossible conclusion under the evidence—judicial, military, and

[a] See Gentini case, p. 720, and Giacopini case, p. 765.
[b] See page 724.

prison records must exist to demonstrate the fact. When the reason for the rule of prescription ceases, the rule ceases, and such is the case now.

It is true that the claimant has not presented his claim to the Government at Caracas, but his unavailing efforts to get relief at home may well have discouraged him. As having some incidental bearing we are told that complaints made by Italians of acts of the character here indicated came to the General Government about the time of the occurrence of the injuries, and strict orders for the cessation of the causes for them were very promptly and properly given, a representative of the Government being sent to the neighborhood to secure correction of abuses.

The offenses complained of now are double in nature, consisting of unjust imprisonment and denial of justice. The only cause for imprisonment was the nonpayment of an illegal exaction. Clearly this affords ground for recovery. That there was a denial of justice is likewise evident. Military authority could not justly override civil authority, as the superior judge seemed to admit, and it was immaterial whether the claimant were Venezuelan or Italian, although the procurador refused relief because of a supposed lack of proof of Italian citizenship.

The forced loan violated many provisions of the constitution, among them, that property should only be subjected to contributions decreed by the legislative authority, in conformity with the constitution; that no Venezuelan could be taken or arrested for debts not proceeding from fraud or wrongdoing; that all shall be judged by the same laws and subject to like duties, service, and contributions. Strangers enjoy, under the constitution, all the rights of Venezuelans.

In refusing the relief prayed for, the officers of the judicial department were guilty of a gross denial of justice, failing, as they did, to follow the excellent laws prescribed by Venezuela. In so doing they unfortunately subjected the Government to liability.

The claimant fixes no amount for his demand, but the royal Italian legation asks 5,000 bolivars. In view of the gravity of the case this amount seems reasonable, and will be accorded without interest.

GIACOPINI CASE.

Venezuelan authorities having been notified of the taking of proof thirty-two years ago and having assisted therein, the principle of prescription held not to apply, although no express demand was made.

Allowance made for imprisonment of claimant.[a]

RALSTON, *Umpire:*

This case comes to the umpire upon a difference of opinion between the honorable Commissioners for Italy and Venezuela.

---

[a] Measure of damages for unlawful imprisonment is largely discussed in the Topaze case (supra, p. 329), and many of the authorities to be found in Moore are abstracted in that case on page 330. In addition in Moore and elsewhere may be enumerated the following:

Moore, pages 1646–1653, case of Charles Weile, before the Peruvian Claims Commission, for imprisonment for an uncertain time, payment was allowed of $32,407.

Moore, page 1655, case of George Hill, before the same Commission, for being fired upon and made a prisoner for three days, without food or medical attendance, claimant was awarded 6,000 Peruvian soles, or $5,555.

In 1871 Domenico and Giuseppe Giacopini, Italian subjects, were merchants, doing an extensive business at Valera. In November of that year their partnership store was entered by Venezuelan troops, by order of General Pulgar, commanding the right wing, and there was forcibly taken from it property of the value indicated: Coffee, 14,400 fuertes; potatoes, 250 fuertes; cacao, 40 fuertes; fennel, 112 fuertes; general merchandise, 2,000 fuertes; personal and household effects, 500 fuertes; figs, 640 fuertes. In addition, mules were taken to the value of 2,400 fuertes and oxen worth 100 fuertes. About the same time Domenico Giacopini was arrested on an unfounded charge of complicity in political disturbances, and transported by the army, in chains, under dangerous conditions, to Maracaibo, where, contrary to the Venezuelan constitution, he was thrown into prison in association with criminals, and again, contrary to the same instrument, loaded with fetters. After some weeks he was released from prison upon payment of a forced exaction to General Pulgar of 400 fuertes and the execution of a bond requiring his presence in Maracaibo to meet any charge brought against him. None such was ever brought, and after seventy-five days of absence from his business, part in actual and part in virtual captivity, he was restored to his home in Valera. Giuseppe Giacopini also spent some time in prison, but its term is not fixed, and this element of damage is not considered for reasons hereinafter given.

Against the claim it is first urged that prescription should lie, about thirty-two years having elapsed since its origin. In the Gentini case, No. 280,[a] in this Commission, the umpire referred to the fact that under certain circumstances prescription would not be recognized as a defense, mentioning specifically that of bonds "as to which a public register had been kept," and furthermore stated that the presentation of a claim to competent authority within proper time would interrupt the running of the time of prescription, adding that there were other qualifications "which might be imagined" without entering into an attempt to enumerate them.

Footnote continued.

Moore, page 3240, case of Baldwin, before the Mexican Commission of 1839, for 84 days of imprisonment, claimant was awarded $20,000.

Moore, page 3247, case of Barnes, before the Mexican Commission of 1868, for sixty days' detention, claimant was awarded $5,100.

Moore, page 3248, case of Rice, before the same Commission, for three days' imprisonment, claimant was awarded $4,000.

Moore, page 3251, case of Jonan, before the same Commission, for imprisonment during long periods in 1853 and 1854, claimant was awarded $35,000 Mexican gold.

Moore, page 3252, case of Moliere, before the Spanish Commission, for sixteen days' imprisonment, claimant was awarded $3,000.

Moore, page 3253, case of Jones, before the same Commission, for thirty-one days' imprisonment, claimant was awarded $5,000.

Moore, page 3277, case of Casanova, before the same Commission, for twenty days' imprisonment, other elements entering into the affair, claimant was awarded $6,000.

Moore, page 3282, case of Rahming, before the British Commission, claimant was imprisoned about eight months, and was awarded the sum of $38,500.

Moore, page 3283, case of Stovin, before the same Commission, for five weeks' imprisonment, claimant was awarded $8,300.

Moore, page 3285, case of Shaver, before the same Commission, for two months and twenty-one days' imprisonment, claimant was awarded $30,204.

Moore, page 3288, case of Ashton, before the same Commission, for three months and four days' imprisonment, claimant was allowed $6,000.

Moore, page 1807, case of Van Bokkelen *v.* Haiti (Foreign Relations U. S., 1888, p. 1007), plaintiff was allowed $60,000 for an imprisonment of fourteen months and twenty-two days.

[a] See p. 720.

Examination of the expediente in the present case shows that the tribunal before which the proofs were made (in November, 1872), directed notice to the fiscal of the nation before their taking; that he was present and vigorously cross-examined the witnesses; that he asked and was accorded by the judge a copy of the evidence. The Government knowing in this manner of the existence of the claim had ample opportunity to prepare its defense.

As was stated in the Gentini case:[a]

> The principle of prescription finds its foundation in the highest equity—the avoidance of possible injustice to the defendant.

In the present case, full notice having been given to the defendant, no danger of injustice exists, and the rule of prescription fails.[b]

In addition, as bearing upon the question of its good faith (though not to be considered as of conclusive legal value), the claim was made known to the royal Italian legation in 1872. At a later period one of the claimants (with a letter from a high Venezuelan authority recognizing the justice of his demand) came to Caracas to press for relief, but died here before anything could be accomplished. In the Gentini case the claimant never made his supposed grievances known to anyone in authority in any manner for thirty-two years.

We are brought next to the consideration of an objection to a part of the claim. As before stated, one of the original complainants, Giuseppe Giacopini, is dead. His widow has remarried with a Venezuelan citizen. Giuseppe Giacopini's children were born in Venezuela. By the laws of this country the foreign woman who marries a Venezuelan becomes Venezuelan. Under the decision in the Miliani case, No. 223,[c] the children of a foreigner who are born in Venezuela are Venezuelans. In so far, therefore, as the claim belongs to Venezuelans, it is not considered and must be dismissed without prejudice.

The value of mules, coffee, potatoes, cocoa, fennel, merchandise, household articles, figs, and oxen taken from the firm was 20,442 fuertes, or 102,210 bolivars. Four hundred fuertes, or 2,000 bolivars, were paid (apparently in the end by the firm) to General Pulgar, to secure the release of Domenico Giacopini. One-half of this amount may be awarded to Domenico Giacopini. For the time he was in constraint, either in prison or in Maracaibo, the average sum of 50 fuertes per day, or a total of 3,750 fuertes, will be awarded without interest.

The total award to Domenico Giacopini will therefore be 52,105 bolivars, upon which interest may be calculated since December 1, 1872, approximately the date of the taking of proof, and 3,750 fuertes without interest. No award is made of the sufferings of Giuseppe Giacopini nor for money expended by him personally, as only his heirs could possibly be entitled to an interest therein, and they are excluded from this judgment for the reasons hereinbefore set forth.

---

[a] Page 720.
[b] See also the Tagliaferro case, p. 764.
[c] See p. 754.

BOTTARO CASE.

Letter received to explain statement of facts.[a]

RALSTON, *Umpire:*

The umpire has carefully considered the expediente in this case, as well as the opinions of the honorable Commissioners for Italy and Venezuela; this case reaching him because of their differences of opinion.

It is contended on behalf of Venezuela that the case is badly proven; two of the witnesses testifying, not from their knowledge of the facts, but from their public notoriety, and the third witness giving no reason to support the testimony furnished by him. Furthermore, it does not appear in evidence whether the troops taking the property, for the seizure of which recovery is sought, belonged to the Government or revolutionary forces.

On the other hand, it is contended that the proof is sufficient, and it is pointed out that a letter from the claimant has been filed, showing that of the eleven chiefs whose action was complained of, four were chiefs of the Government.

In some respects the proof in this case affects the umpire favorably. For instance, the property taken has been enumerated specifically and the values of each class given; the values so furnished being in every case apparently reasonable. It is true that two witnesses attest the facts from public notoriety, but the third witness speaks with sufficient definiteness, and apparently of his own knowledge.

The proof is not as complete as it should be, in that it fails to show the number of cattle, burros, or horses taken by each particular leader, either of the Government or of the revolution. We are only favored with the aggregate number. The letter of the claimant designating which chiefs were of the Government or of the revolution, undertakes to attribute to the governmental chiefs the taking of more than four-fifths of the property lost by him. As but four of the eleven chiefs were of this side, the umpire is disposed to think that while his statement may be true, it is not probable, and no details are furnished which would tend to establish its probability. In view of this fact, and bearing in mind the proportion existing between the two contending forces, he is disposed to think that approximate justice will be rendered by charging the Government with the taking of property to the extent of 6,000 bolivars, upon which amount interest may be calculated to the 31st day of December, A. D. 1903.

The umpire accepts as evidence, though, naturally, of the lightest character, the letter written by the claimant; it being his duty under the protocols to receive and carefully examine everything presented to him.

---

[a] As showing extent to which informal proof may be received, see Lasry case, p. 37, Faber case, p. 600 and note and p. 930.

DI CARO CASE.

In estimating damages for unlawful killing, age and station in life, deprivation of comforts and companionship, and shock to surviving members of the family may be taken into consideration among other elements.

An award will not be made in favor of Italian subjects who have served in revolutionary forces.

Claim for money said to have been taken rejected because of deficient proof.

RALSTON, *Umpire:*

The claim of Beatrice Di Caro, widow of Giovanni Cammarano, has been submitted to the umpire upon difference of opinion between the honorable Commissioners for Italy and Venezuela, upon the question of the amount of damages.

The admitted facts seem to be that on May 4, 1902, two government soldiers went to the store or "pulpería" of Giovanni Cammarano in Duaca, when he was absent, and, after demanding various articles with which they were supplied, attempted to assault the claimant, Beatrice Di Caro and her daughter-in-law. The two sons of Giovanni Cammarano struggled with the soldiers and one son, getting possession of the gun of a soldier, shot and killed him. The remaining soldier escaped. The sons thereupon fled.

A detachment of soldiers in charge of an officer shortly after went to the house and, finding Giovanni Cammarano, who had meanwhile returned, demanded the whereabouts of his sons. This he was unable or unwilling to give. They seized him and, conducting him about a square and a half, cut him with a machete and shot and killed him in the street. Thereafter the soldiers sacked the store and again, on January 27, 1903, the store having been somewhat replenished, it was plundered by the government forces.

The claimant fixes the value of property taken at 16,468 bolivars and of cash money at 13,554, or at another place at 14,072 bolivars.

The sons of the claimant, shortly after the occurrences first mentioned (and possibly before), joined the revolutionary army, but there is no sufficient reason to believe that claimant's deceased husband took any part in the domestic difficulties of Venezuela.

The first question presenting itself is as to the damages to be awarded claimant for the unwarranted killing of her husband. The honorable Italian Commissioner would fix this award at a considerable amount. The honorable Commissioner for Venezuela, arguing that the deceased, had he been a young man, could not have earned more than 3 bolivars a day and that, being 64 years of age, his expectancy of life could not exceed six more years, would award damages for his death at not to exceed 6,510 bolivars.

The argument in favor of the sum last named is based exclusively, as appears, upon the theory that the deceased was but a laborer, and that his death only deprived his family of his value as such laborer. But the evidence tends to show that he was a shopkeeper and bought and sold coffee and other productions in considerable quantities, besides apparently cultivating a small piece of land, the extent of which is not given. We may fairly consider, therefore, that his earning power would be much more than 3 bolivars a day.

But while in establishing the extent of the loss to a wife resultant upon the death of a husband it is fair and proper to estimate his earning power, his expectation of life, and, as suggested, also to bear in

mind his station in life with a view of determining the extent of comforts and amenities of which the wife has been the loser, we would, in the umpire's opinion, seriously err if we ignored the deprivation of personal companionship and cherished associations consequent upon the loss of a husband or wife unexpectedly taken away. Nor can we overlook the strain and shock incident to such violent severing of old relations. For all this no human standard of measurement exists, since affection, devotion, and companionship may not be translated into any certain or ascertainable number of bolivars or pounds sterling. Bearing in mind, however, the elements admitted by the honorable Commissioners as entering into the calculation and the additional elements adverted to, considering the distressing experiences immediately preceding this tragedy, and not ignoring the precedents of other tribunals and of international settlements for violent deaths, it seems to the umpire that an award of 50,000 bolivars would be just.

The next question of difference is as to the award for property taken. The umpire is not disposed to accept the claim for cash money said to have been taken. This, it is alleged, was sent to the decedent by a bank a short time previous to his death, and the sons, for whose benefit the umpire does not feel he can make an allowance because of their revolutionary career, were apparently interested in it. Besides, its existence is not clearly shown; and if it had been received from a bank, this fact was susceptible of definite and disinterested proof, which is lacking. In addition, the amount, considering the claimed value of the deceased's other property, is so unreasonably large that excessive exaggeration may be presumed. The umpire is further satisfied, taking the evidence as a whole, that the value of the contents of the "pulpería" has been grossly overestimated, and that if he allows 1,000 bolivars as the value of the widow's interest in all of the personal property, he will be doing full justice.

BIAJO CESARINO CASE.

Governments are liable for the wanton acts of their officials.[a]

RALSTON, *Umpire:*

The foregoing cause was duly referred to the umpire, on difference of opinion between the honorable Commissioners for Italy and Venezuela.

The claim arises because of the killing of Gaetano Cesarino, father of the claimant, in the town of Tocuyo on the 9th day of April, A. D. 1903, by a shot fired by a police official named Manuel Aguilar. The claimant asks 50,000 bolivars.

From the undisputed facts in the case, it appears that Manuel Aguilar was at the time a police official, and fired upon the deceased, a pedlar by occupation, as he was crossing a street of Tocuyo. The first proofs submitted tended to show that Aguilar was about 50 meters from the deceased at the time he shot, but subsequent more exact information places the distance at 200 meters.

At first it was proven simply that the deceased was killed by the official named, no particulars being furnished, leaving it open to be supposed that the killing might have been accidental, or brought about

[a] Cf. Poggioli case, p. 847 and notes.

upon sufficient cause. The later evidence, however, demonstrated that the deceased was a peaceful, inoffensive man, who had taken no part whatever in any political questions, and was engaged in no disturbance and furnished no cause for the act against him. The assailant professes entire ignorance of the event, but a man who stood next to him, Giminez, saw him raise his gun and fire at the deceased, and suggests no provocation or excuse.

There is considerable evidence tending to show that there were street fights in Tocuyo on the morning in question between Government troops originally in possession and revolutionary troops which were entering, and the testimony of some of the witnesses would seem to indicate that the killing of Cesarino occurred about the time of an exchange of shots. Other papers submitted apparently demonstrate that there was no contest between the contending parties until about an hour after Cesarino was killed. Whatever may be the exact fact as to this point, it does appear that the deceased took no part in the contention, but was shot down in the street unarmed. Nowhere is it suggested that he suffered because believed to be taking part with the revolutionists, and one is unable to determine whether he was killed by Aguilar in a spirit of reckless bravado or in unreasoning panic. Certain it is that the killing was utterly causeless, while deliberate.

The umpire can not, under all the evidence in the case, accept the theory that the death of Cesarino was one of the incidents of war for which no responsibility exists. True it is that governments are not to be held to too close accountability for the misdirected shots of their soldiers or for every display of lack of judgment, but this is not to say that the existence of war frees them from every responsibility. Cases before the present Commissions in Caracas afford many illustrations of decisions holding the Government of Venezuela liable for the wanton or negligent acts of its agents in war and in peace, and, in the judgment of the umpire, the present claim should be added to the list o such cases.

The claimant apparently claims for himself and his mother and a minor child. In the estimation of damages, he, being a man of full age and married in Venezuela, will not be recognized. There is no proof of the marriage of his mother or the existence of a minor child, except as he has stated, and, in the opinion of the umpire, the royal Italian legation requesting it, an opportunity to furnish other and more exact proof should be afforded. No award will therefore be made pending the furnishing of fuller proof.[a]

OLIVA CASE.

(By the Umpire:)

Expulsion under circumstances of contumely and upon mere suspicion will sustain a claim for damages.

Concession indirectly taken away by unlawful expulsion may be compensated for, the measure of damages in this case being limited to amounts properly expended in procuring it, speculative and conjectural profits being rejected.

AGNOLI, *Commissioner* (claim referred to umpire):

The principle involved in the claim under consideration is analogous to the one which was fully studied in the Boffolo case, in which was

[a] Later the lacking proof was furnished and award given for 40,000 bolivars.

delivered an elaborate decision by the honorable umpire, and to the case of Clemente Giordana, in which an indemnity was agreed upon between the Commissioners.

The circumstances attending the expulsion of Lorenzo A. Oliva, however, and the consequences flowing from the arbitrary proceedings against the interests and to the injury of the claimant, are of special gravity and require to be set forth in detail.

Oliva had lived in Venezuela a number of years, and from 1891 to 1898 was employed in the important commercial house of Bisagno, Oliva & Co., Italian merchants of Maracaibo. It does not appear, and no proof to the contrary has been adduced, that the claimant during all this time had ever embroiled himself in the political struggles of the Republic, notwithstanding that during this period the Crespo revolution burst forth. We have from this moment evidence of Oliva's pacific tendencies, for, on the 3d of July, 1900, he made arrangements with the Government of Caracas to contract for the erection of a public cemetery, the clauses of which contract we will examine more closely further on in the course of this memorial. On the 31st of October of that year he entered into an agreement with the firm of I. Brocchi & Co., of Habana, in virtue of which said firm was to advance him $50,000 American with which to commence the construction of the cemetery. On the 23d of November following the claimant went to the Venezuelan counsel at San Juan de Puerto Rico and asked for and obtained a passport for La Guaira. It will be noted that, as passports are not required of foreigners disembarking at ports of the Republic, the spontaneous presentation of himself at the office of the consul, as aforesaid, constitutes for the claimant presumptive evidence that he was proceeding to Caracas for the transaction of important business and not for political reasons.

The claimant reached La Guaira the 27th of that month and Caracas the 28th. On the day following he was arrested, and the next, by official decree, he was expelled.

What were the reasons of the Government of the Republic for issuing an order which not only infringed the liberty of the claimant, granted him under the constitution and by the treaties, but prevented him from carrying out an advantageous contract stipulated nearly five months before between him and the Government of Caracas?

The writer believes there were no reasons, and this from the following considerations:

The decree of expulsion in nowise explains, nor does it even fasten upon the claimant, the vague and indefinite stain of being "notoriously injurious to public order."

He had had personal relations with the ex-president, Ignazio Andrade, and from this arose the suspicion that not only was he a revolutionist, but so closely allied with the rebel factions as to have undertaken to carry with him their political correspondence to Venezuela. All of which is extremely improbable and even absurd. No proof has been advanced in support of these suspicions, and no incriminating papers were found on him at the time of his arrest.

The Venezuelan Government which, when the royal Italian legation, in December, 1900, intervened in behalf of claimant, had alleged as the cause of expulsion "the inconvenience of the attitude assumed by that subject (i. e., the claimant) as contrary to the security of the peace," has not been able to furnish this Commission anything more

definite than a report of the Venezuelan consul at San Juan de Puerto Rico that there were rumors connecting Oliva with the Andradists.

It is worthy of note that the consul, to whom Talleyrand would have found it unnecessary to give his famous advice, "Surtout pas trop de zèle," waited until the 2d of April, 1901, to explain why he had conceived suspicions in the preceding November regarding the claimant, and there is nothing to show that he had, either by telegraph or in a letter by the steamer on which Oliva was traveling, denounced him to the Venezuelan authorities; but even admitting that he had done so, it is beyond question that had the consul attributed any weight to the rumors concerning the claimant he would have taken steps to have him searched or arrested on board the *Philadelphia*, so that the Government might eventually gather proofs in support of the accusations directed against him and prevent all danger from the supposed revolutionary correspondence. But, however all this may be, it is indisputable that nothing material or convincing has been submitted to us that would make us believe or admit that Oliva was a revolutionary agent, or was returning to Venezuela for any other purpose than to complete the contract for the erection of the cemetery at Caracas.

The foregoing would be sufficient to prove his expulsion harsh and arbitrary; but there are other very strong reasons for believing that he was simply the victim of a precipitate and abusive measure.

Even though the claimant be in nowise bound to furnish negative proof of his abstention from political affairs, a most difficult thing in any case, but particularly so in his case, on account of having been compelled for many years to live far from Venezuela, he nevertheless exhibits the statement of Ramiro Callazo, then consul for Venezuela in Habana, from which it appears that that ex-functionary had always known him in that city as a man of pacific habits and one occupied exclusively with the conduct of his business affairs.

It should also be remembered that he had contracted with agents of the very Government that had deposed Andrade from the Presidency to build the cemetery; that there never had been the least probability that the deposed President would ever again assume the reins of government, nor even was there a party that thought of restoring him to his high office after his forced departure from his country. It can not be shown that he ever schemed or intrigued with this end in view, or ever encouraged revolts. It is notorious that Andrade is far from being venturesome, but is of a conciliatory disposition, and his recent submission to President Castro, who has permitted him to return to Caracas, where he is now living peacefully, is the best evidence of the truth of these assertions.

These circumstances are so well known that it is not worth the while to insist on them. They have merely been related to show the impossibility of admitting, except on absolute proof to the contrary, that the claimant at the time he was coming to Caracas for the purpose of constructing the cemetery according to the contract entered into by him with the functionaries of the existing Government, was simultaneously in the secret service of a President and a party that had not the slightest probability of returning to power; he, who from his long residence in the Republic, must have been perfectly acquainted with the internal political conditions among which he had always observed the strictest neutrality. To hold the contrary would be to consider the claimant

as guilty of both imprudence and improvidence to an improbable degree.

On the question of the arbitrariness of claimant's expulsion the Italian Commissioner believes he has said enough to place it beyond doubt. An indemnity should therefore be awarded, and it only remains to fix the amount thereof according to rules of equity.

The claimant demands 2,158,707 bolivars, which is an exaggeration. The sum is thus divided by him: 1. For the forced settlement of his business house in Habana, 32,295 bolivars; for moral reparation of his arbitrary arrest and expulsion, 1,000,000 bolivars; for loss of his share of profit following the forced suspension of the contract, 1,126,512 bolivars.

Let us examine these three items.

The claimant has submitted an extract from his account books, sworn to before a notary, from which it appears that during the period from July 1, 1899, to December 31, 1900, his business house in Habana suffered a loss of 32,295 bolivars, as before stated. Of this sum 4,917 bolivars were spent in voyages to Venezuela on business connected with the construction of the cemetery, and this sum it would seem proper to reimburse. It is not possible to state exactly, nor can the claimant on this point give more conclusive evidence than that already furnished, whether the ulterior loss of 27,378 bolivars was the direct result of the precipitate liquidation of the Habana business, but it is presumable that it was largely so. Therefore the writer begs that the honorable umpire, in determining what amount of indemnity shall be allowed, will take into due consideration in this respect the indications furnished by the claimant of the losses suffered by him in consequence of the forced abandonment of the contract for the erection of the cemetery.

The item of 1,000,000 bolivars in compensation for expulsion is by far too large, but an award is certainly due him under this head. Considering, therefore, the good reputation always enjoyed by the claimant, his industrious character, and the high social class in which he moves, as well as the fact that the expulsion was from a free country, without just motives or the assignment of any adequate reasons therefor, besides the injury to his standing and business relations resulting from so arbitrary an act, the writer is of opinion that an indemnity of not less than 40,000 bolivars should be conceded, independently of any sum which might justly be found due him for losses resulting from the arbitrary rupture of the contract aforementioned, since there can be no doubt that, even had he not obtained the concession referred to, the sole fact of his arbitrary expulsion would furnish sufficient ground for a demand of indemnity.

Let us now turn to the oft-cited contract, and assume that no consideration need be given the clause in article 10 thereof, in which Oliva renounces the right to claim by diplomatic recourse. The claimant could not renounce what was not exclusively his, since governments exercise diplomatic protection whenever the same seems to them a just and proper measure in defense of their interests and dignity, without regard to any private agreements to the contrary, particularly as these latter are often made through necessity on the part of their subjects. Never has any validity been attributed to clauses analogous to that found in the Oliva-Otanez contract, and which are frequently encountered in contracts entered into with governments of South American

republics, and it has sometimes been necessary to depart from the rule adopted by the legislatures of many of those States, according to which foreigners have not, except in extreme cases, the right to appeal to their governments for protection; this in deference to the principle that sovereignty is not absolute, but limited by the right of others to make good whatever valid reasons they may have.

But in the present case there is more, and that is that by the protocol of February 13, 1903, the Venezulean Government expressly renounced all exceptions of this nature in the Mixed Commission.

Now we must consider in the first place that the contract drawn up between the claimant and the municipal government of Caracas, which is nothing more than a branch of the Federal Government, has nothing in common with those fantastical concessions so frequently put forward as the bases of unjustifiable claims. Oliva undertook to furnish Caracas with something of which it stood and still stands greatly in need. With this object in view, he closed out his business in Habana with the intention of definitely abandoning that city, and made trips to Venezuela, submitting to the Government officials here plans of the proposed cemetery (which are to be found among the papers) designed by the engineer Enrico Giorgi, to whose collaboration the claimant had had recourse.

Before leaving Habana he secured, by means of a special contract, the financial aid of the firm of G. Brocchi & Co., which agreed to furnish him at once $50,000 for the commencement of the proposed work, and additional sums later on, all of which conclusively shows the earnestness of Oliva's purpose. The calculation which he makes of the losses to which the breaking of the contract has subjected him, while certainly not exact, is by no means devoid of foundation.

He certainly could not predicate the number of deaths in Caracas during the twenty years' duration of the concession, nor how many of the families of such deceased would have been minded to purchase the sepulchers that it was proposed to construct, and no one could tell with any degree of exactness whether the prices which it was proposed to charge for the various tombs and chapels would have been within the means of said families, but there is no doubt whatever that the death rate of Caracas is considerable and that many persons intend honoring the remains of their dear departed by depositing them in appropriate sepulchers, and that here one can neither live nor die cheaply.

It is quite possible that claimant may have, in his calculations as to profits, indulged his fancy somewhat largely; but, considered as a whole, his claim is just.

It is worth our while to compare the accounts of the claimant with certain data. From various documents forming part of the expediente, and particularly from the issue of the Gaceta Municipal of January 10, 1903, it is shown that in 1902 3,368 bodies were buried in Caracas. Of this number 2,340 were classed as insolvent. The remaining 1,028 belonged to classes in easier circumstances and were officially designated as solvent. From the report of the governor of the Federal District of February 27 and laid before the National Congress of the present year, it appears that during the years 1901, 1902, and 1903 the number of deaths in this capital were 2,838, 3,233, and 3,199, respectively, and that of those who died during the last of these three years 949 were solvent and 2,257 insolvent. It would therefore seem that the claimant's calculations as to the death rate here is correct; but he exag-

gerates somewhat the number of families able to purchase tombs for deceased members. According to his figures these would amount to between 33 and 40 per cent, while official data in our possession show not more than 30 per cent.

We must observe, however, that claimant's memorial is dated March, 1901—that is to say, before the last war, which caused great dearth in business and brought ruin to many families. Should the present conditions of public tranquillity continue, as is hoped and as everything seems to indicate, the normal condition will again be reached.

As to the prices at which the tombs were to be sold, we have not, in truth, any official and correct data to establish this point. From the contract we gather that for each high-class funeral the claimant had agreed to turn into the treasury of the city 40 bolivars and for ordinary funerals 20 bolivars, and further that the contract authorized him to receive from whoever might desire to possess a tomb, either large or small, the sum of 350 bolivars, retaining the privilege of disposing of the mortuary chapels at any price that might be agreed upon. These latter, according to plans, were to be 124 in number.

The claimant in his calculations assumes he might have sold the small tombs at 240 bolivars each, the large at 340 bolivars, and the mortuary chapels at 10,000 bolivars each. The tombs, not counting the chapels, numbered, according to the plans, 7,930, and as about 1,000 persons of the better class die each year in Caracas, this claimant affirms, apparently not without good reason, that in less than twenty years the cemetery to be constructed by him would have been filled.

In order to establish the accuracy of his calculations it would be necessary to have data which, perhaps from the lack of statistics and economic research, neither the claimant nor anyone else could here produce. In other words, it would be necessary to determine beyond question what number of those classed as "solvents" belong to families capable of purchasing tombs at from 240 to 340 bolivars each, and how many (certainly few in Caracas) would undertake to purchase a mortuary chapel at 10,000 bolivars.

It is upon this point that the claimant is, perhaps through no fault of his, vague and indefinite in his estimate. The writer thinks therefore that it would not be equitable to award the sum claimed under this head as representing the value of a ten or twenty years' exploitation of the cemetery.

If the act of expulsion, of which he justly complains, prevented his carrying out an enterprise which would have proved profitable, and besides entailed upon him the expense of voyages and compensations to those who were associated with him in this enterprise, loss of time, etc., it is nevertheless true that since his enforced absence from Caracas he has been at liberty to display elsewhere the activity which he would have employed here.

It is equally to be borne in mind that the sum of 971,000 bolivars which was to be used in the construction of the cemetery could not have been furnished him gratuitously by his capitalists, and even though a portion thereof was to be lent him by Brocchi & Co., of Habana, who, in consideration of which loan, were to have a special interest in the future profits of the cemetery (a deduction on account of which the claimant has already made), the remainder of the funds required to carry on the proposed work must necessarily have been productive before its amortization, whether furnished by himself or obtained from others,

but this circumstance seems not to have been considered by him. Had it been, it would have lessened his estimate of the amount of prospective benefits.

Taking all these facts into account, the Italian Commissioner is of the opinion that the claimant is entitled to an indemnity for enforced nonexecution of his undertaking of not less than 280,000 bolivars—that is, one-fourth the amount claimed by him under this head; for his arbitrary expulsion, 40,000 bolivars, as above stated; for reimbursement of expenses for voyages to Venezuela, etc., 4,917 bolivars; in all, a total of 324,916 bolivars.

ZULOAGA, *Commissioner:*

Lorenzo A. Oliva, an Italian, domiciled in Habana, was expelled from the territory of the Republic by a decree of the chief executive magistrate of November 30, 1900. The Government of Venezuela considered the foreigner, Oliva, objectionable, and made use of the right of expulsion, recognized and established by the nations in general, and in the manner which the law of Venezuela prescribes. Italy makes frequent use of this right. The undersigned does not believe that Venezuela is under the necessity of explaining the reasons for expulsion.

Nevertheless, in the Oliva case, the agent of Venezuela has presented a report of the consul of Venezuela in Puerto Rico and two letters, from which it appears that Oliva was denounced by several persons with whom he came in a ship from Habana as an agent of the revolution of General Andrade, and this denunciation having been transmitted to Caracas, was the cause of the arrest of Oliva. The latter in an interview published in the Pregonero says that on being apprehended he was shown an official telegram in which there appeared the denunciation of the consul at San Juan, and in his letter to the minister of Italy at Caracas, December 6, 1900, he says that "The Government proceeded by virtue of a letter from its representative at San Juan;" and he admits, moreover, that he traveled with General Andrade from Habana to Puerto Rico.

The circumstances which the consul of Venezuela recites and the letters which he sent (which were confidential documents of the minister of foreign relations) are entirely sufficient to justify the suspicions of Oliva's revolutionary character. To this circumstance there is added the fact that Oliva was in fact a personal friend of Andrade, and that he had lived a long time in Venezuela in former years, whereby his complicity with the revolutionists was very plausible. The act of having gone to demand a passport from the consul of Venezuela in order to come to this country when it was not necessary shows also that his mind was not easy, and there were reasons for this. (The denunciation which was made to the consul was subsequent to the granting of a passport, as appears from the report.) As to how far it was ascertained that Oliva was a revolutionist is not a matter for discussion. It was sufficient that there existed well-founded reasons in order that the Government of Venezuela might so believe, and this appears to be proved. The honorable Commissioner of Italy asserts that General Andrade was not a revolutionist. The opinion of the Venezuelan Government was different.

Oliva demands fantastic amounts as damages, which he says he suffered because he could not execute a contract which he had made with the municipal council of Caracas to construct the cemetery of

Caracas, a chapel, and a pantheon for families, and the honorable Commissioner of Italy believes that a large part of them should be allowed him. If Venezuela makes use of a right in decreeing the expulsion, it is clear that it can not be condemned to pay damages, although they were ascertained. This doctrine appears virtually to have been established in the decision of the honorable umpire in the case of Boffolo,[a] since the damages there allowed are not and could not have been for damages inflicted in the exercise of a right, but for "useless vexations in exercising it," which is very different.

It is useless, therefore, to enter into a concrete examination of what is demanded by Oliva, but it is not useless to observe, even if it only be for the moral appreciation of the case, that all his premises are false.

First. It is not true that because of his expulsion it was impossible for him to complete the work, because he might have done so through another person, or at least obtain new extensions of time within which to begin the work, by the consent of the authorities over him.

Second. The assertion is not true that he had the concession for the cemetery of Caracas. He had only the right to construct therein a building to keep remains and build vaults to deposit cadavers in. The cemetery was to remain such as it is.

All the statements are therefore erroneous.

I do not find that it is shown that Oliva has suffered in his expulsion violences or insults which were not the natural consequences of the decree, and of the necessity of carrying it out, and considering the charges made against Oliva it is easily understood that he was not allowed liberties which might aid the fulfillment of a revolutionary commission, if perchance he carried it.

AGNOLI, *Commissioner* (in reply):

The Venezuelan Commissioner has characterized the principle that I have maintained as absurd; that is to say, that a contract is broken as soon as one of the contractors is expelled by the other from the territory of the state in which the contract ought to have been performed.

The undersigned refrains from calling the opinion of his colleague as absurd, but he finds it very original, to say the least.

Mr. Oliva stipulated with the municipality of Caracas, which is nothing but a branch or an organ of the Federal Government, to execute his contract himself.

To demand that Oliva should have had recourse to managers or to powers of attorney, to ask of him and impose on him the placing of his confidence in people whom we do not know and whom perchance he could not find—to pretend in fine that he should assign his contract without knowing that anyone would accept his terms or that he should direct the work which was to have been done at Caracas from Habana or any other place—is preposterous.

His contract was broken de facto, because its execution under the conditions agreed on, was rendered impossible by an arbitrary measure of the *state*, it is true, but of a state which had been by the intervention of one of its organs one of the contracting parties.

Has the Venezuelan Government at last shown its good will by revoking the decree for the expulsion of Oliva? Never.

---

[a] Page 696.

Under these circumstances it is certain and sure that the claimant has a right to an indemnity because of the consequences of the breach of his contract.

There is not a court in the world that would not allow damages under such circumstances, and the Mixed Commission, which is a tribunal of equity, ought all the more to allow them.

If the demand which Oliva presents on this account is rejected under the pretext that he had not commenced the work on the cemetery when he was expelled, and that therefore he suffered no direct damages, the absolutely subversive principle is sanctioned that the Venezuelan Government can, by an act of expulsion, or by no matter what illegal act, fail in the performance of its obligations assumed by contract, without making itself liable to any penalty.

The Valentiner case[a] that the Venezuelan Commission cites proves nothing, or rather proves that the claim of Oliva is well founded in principle.

Mr. Valentiner made a claim because of the consequences of the recruiting of his laborers. The recruiting was a *legal act* in principle; and the umpire of the German Commission, in refusing indemnity, has acted properly.

Liability can not attach to a person who exercises his right.

Oliva makes a claim on account of the consequences of an *illegal act*, and all the more unjust because this act was committed against a person who was in possession of a contract entered into with the Government itself, which by this abusive measure injured him.

The Venezuelan Commissioner finds that Mr. Oliva has not proved his innocence. It is not his place to prove this innocence. Every man is considered innocent until the proof of the contrary is produced. It was therefore the Venezuelan Government that should have proved that the claimant was guilty, and this is just what it has not done.

When expulsion is resorted to in France or Italy the proofs are at hand. Mere suspicions may justify measures of surveillance, but never a measure so severe as that of forbidding the residence in a country of a man who has important interests therein. In the opinion of the Venezuelan Commissioner there is constant mention of a *chapel*. It was not only a chapel that Mr. Oliva was to have built; it was a chapel and a *cemetery*. A plot of ground had been granted him of 19,600 square meters in which the chapel should have been built with a great many annexes and sepulchers besides the cemetery. The neighboring ground, 100 meters square (in all 10,000 square meters), was to have been filled with sepulchers.

According to the proposed management and plans the number of sepulchers to be constructed was to have been 7,930, without counting 120 little chapels, which were anticipated being sold at 10,000 francs each.

There was therefore a matter of importance under consideration, and not merely a chapel of which the Venezuelan Commissioner speaks.

RALSTON, *Umpire:*

The above entitled claim has been duly submitted to the umpire upon difference of opinion between the honorable Commissioners for Italy and Venezuela. The claim, which is for the sum of 2,158,807

[a] Page 562.

bolivars, grows out of the expulsion of Oliva from Venezuela, and the facts in connection therewith seem to be as follows:

In the month of November, 1900, Oliva went as a passenger from Santiago de Cuba to San Juan, Puerto Rico, at which point he changed his steamship for one going directly to La Guaira. At San Juan he received a passport from the consul of Venezuela. He reached La Guaira on the 27th and Caracas on the evening of the same day. In the afternoon of the day succeeding his arrival he was arrested upon the order of the governor of the Federal District in consequence of a telegram sent by the prefect of La Guaira, resulting from a denunciation made by the Venezuelan consul in Puerto Rico, declaring that he was an intimate friend of General Andrade, and was going to Venezuela in the capacity of revolutionary agent. He was taken to the prefecture, where he was detained until 7 o'clock in the evening. He was then returned to his hotel, but kept under guard until the President should order his restoration to liberty, which, it was believed by the police officers, would be immediate. He was placed incomunicado for a number of hours, and was not allowed to speak to his counsel or seek relief in the courts of justice. All of his commercial books, correspondence, and letters were examined without the discovery of anything of an incriminating nature. His companions in jail were French criminals who had escaped from Cayenne. He was then taken to La Guaira, and under circumstances of contumely sent out of the country.

In the month of July, 1900, Oliva had entered into a contract with the municipal council of the Libertador Department of the Federal District, obliging himself to construct a family pantheon in the cemetery of the south, and he had immediately thereafter gone to Habana, where he had been engaged in business, closed up his business, as it is said, at a loss, arranged to raise the money necessary to construct the pantheon, and when arrested was about to commence the work. His expulsion rendered it impossible for him to proceed with the concession so obtained, and he was compelled to abandon it, together with all prospects of future profits.

The umpire does not find it necessary to again discuss the principles governing the right of expulsion. The existence of this right was recognized, and the dangers incident to its exercise were sufficiently pointed out in the case of Boffolo, in which an award of 2,000 bolivars was given. It is sufficient in the present case to say that the expulsion of Oliva appears to have taken place without legal right, although it is recognized that the Government at the time felt itself authorized to exercise its power. The mere idle suspicion of a consul should not, however, in an international commission be received as a sufficient justification for the infraction of an international right.

In the Boffolo case, the umpire, in granting but 2,000 bolivars, was influenced by what seemed to be the unworthy character of the man. In the present case the claimant appears to have been a man of standing and character and recognized by a branch of the Venezuelan Government as a worthy concessionary. The honorable Commissioner for Italy now asks 40,000 bolivars for the expulsion, and this amount is not, under the circumstances, considered as excessive.

Large damages are asked for the practical loss of the concession above referred to, and elaborate calculations have been made as to the probable number of deaths in Caracas during the period of the concession, the

number which would have been interred within this pantheon, and the probable profits arising from each sepulture. In the opinion of the umpire this method of computation must be entirely rejected. It is first to be borne in mind that the concession was not exclusive in its nature. Any number of concessions might have been given, the effect of which would have been to render this one valueless. Furthermore, the number of interments in this pantheon and the possible profits on each interment are so absolutely uncertain that they could not be accepted as a basis of calculation in an ordinary civil tribunal, much less in an international one. We have only to refer, so far as international tribunals are concerned, to the Geneva arbitration; some of the reasons for the conclusions arrived at being stated by Mr. Frazier, on the part of the United States, in the American and British Claims Commission, as follows (4 Moore's International Arbitration, p. 3926):

> The allowance of prospective earnings by vessels was denied by the tribunal at Geneva unanimously. It is not, so far as I am aware, allowed by the municipal law of any civilized nation anywhere. The reason is obvious and universally recognized among jurists. It is not possible to ascertain such earnings with any approximation to certainty. There are a thousand unknown contingencies, the happening of any of which will render incorrect any estimate of them, and hence result in injustice.

The municipal law of the United States is to much the same effect. Thus in Hodges *v.* Fries (34 Florida, 63) it was held that profits which are speculative or conjectural are not generally regarded as elements in fixing damages in actions for breach of contract between lessor and lessee, not because there is anything in their nature per se which demands their reduction, but because they can not be estimated with reasonable certainty.

Again, in Newbrough *v.* Walker (8 Grattan, 16) it was held that the same rule applied to breach of covenant to lease a mill, and evidence in an action for the breach as to what the lessee could have cleared from the use of the mill was speculative and conjectural, and furnished no legitimate basis on which to estimate damages, and the same rule has been followed in a very great number of like cases.

It is not to be inferred, however, that Venezuela has the right, either directly or indirectly, to break the concession, or that no recovery therefor should be allowed against it. A nation, like an individual, is bound by its contract, and although it may possess the power to break it, is obliged to pay the damages resultant upon its action. In the present case, what was the value of the contract? This value is not determined by prospective profits, for the reasons above indicated. In this case, and referring only to the particular facts involved in it, we may concede that the value of the contract is the amount expended to obtain it (plus a reasonable allowance for the time lost by the claimant in connection therewith), and while the proof upon these points is not as clear as might be asked, we may accept as the amount recoverable the figures given in the profit and loss account of Oliva, as expended in his first voyage to Venezuela in the cemetery matter, to wit, $675.54, or 3,512.81 bolivars. For his time, evidently covering several months, the sum of 5,000 bolivars may be allowed.

There is also to be allowed in favor of the claimant the expenditures of his second voyage, amounting to $357.03, or 1,856.56 bolivars.

The umpire is asked to allow the loss to which it is said Oliva was subjected, because of being compelled to dispose of his stock of goods in Habana at a reduced price, to enable him to go to Caracas and enter

upon the cemetery concession. So many elements enter into a matter of this sort that the umpire can not accede to this suggestion. The goods may have been sold at a reduced price, because of a falling market, because of their age, or for other reasons he is incapable of appreciating, all the surroundings not being presented to him. He would not be justified in charging this loss, therefore, against Venezuela, even were it otherwise proper, with relation to which he expresses no opinion.

An award will therefore be signed for the amount of 50,369.37 bolivars, with interest on 10,369.37 bolivars from October 28, 1903, to and including December 31, 1903.

CORVAÏA CASE.

(By the Umpire:)

This Commission only has jurisdiction over "Italian claims," meaning thereby claims which were Italian in origin and Italian when the Commission was formed.

In the present case the original claimant, born a subject of the Two Sicilies, lost his citizenship, according to the code of that country, by accepting diplomatic employment from Venezula, and never regained it, and the claim of his heirs must, therefore, be rejected.

Venezuela knowing that when Corvaïa entered her diplomatic services he abandoned Sicilian citizenship, Italy is now estopped from claiming him as a subject.

Semble that a man (and consequently his heirs as well) who accepts, without permission of his government and against her laws, such public and confidential employment from another nation is estopped from claiming his prior condition to the prejudice of the country whose interests he has adopted.

Sambiaggo case [a] affirmed in its interpretation of "most-favored-nation" clause.

AGNOLI, *Commissioner* (claim referred to umpire):

Contrary to the position taken by his learned colleague of Venezuela, the Commissioner for Italy holds that Baron Fortunato Corvaïa did not, by the fact of his having accepted charges and missions from Venezuela (in the absence of evidence of his having previously obtained the consent of his own Government) lose his Italian citizenship, and, true to the principle he has always maintained that the original nationality of a claim should be considered as the absolute rule and guide in determining its admission before this tribunal, invokes from the umpire a decision which will recognize all the heirs of Corvaïa as entitled to share in the liquidation of the estate in just and due proportion, and without distinction based on their actual citizenship.

But should the umpire consider the Baron Corvaïa as having lost his primitive nationality, the Commissioner for Italy begs to insist that the deceased had not thereby acquired citizenship in Venezuela, and could not have contracted any bond of allegiance to this Republic.

It is therefore his opinion that this claim should, even under the least favorable hypothesis, be considered foreign with respect to Venezuela, and that consequently the umpire should, without prejudice to the rights of such of the heirs whom he intends considering as invested with Venezuelan or other nationality, in consonance with the principles he has himself proclaimed, award a due share of the indemnity claimed to such of the heirs of Corvaïa as are to-day enjoying Italian citizenship.

---

[a] Page 666.

As regards the nationality of Baron Fortunato Corvaïa, the Italian Commissioner again calls the attention of the umpire to the arguments addressed to him in the Giordana claim, No. 116, which was allowed as a claim for salary due for services rendered as engineer for the Venezuelan Government. It is indeed true that the services performed by Baron Corvaïa in the United States and at Paris were vastly more important than those of Giordana, but when it is considered that they were rendered in a time of absolute peace between this Republic and other nations, particularly the Kingdom of the Two Sicilies, it must be admitted that the deceased was never in a position to defend foreign rights and interests in conflict with those of his country, and that he did not resort to extremes which, according to rule, are considered necessary, when services rendered a foreign government, without the consent of the home government, involve a loss of nationality.

For the rest, it appears from documents submitted to the Commission that the Corvaïa family, out of favor with the Bourbon Government on account of its liberal sentiments, had been driven from the Kingdom of Naples. Could Baron Fortunato Corvaïa, who had followed his father Joseph in exile, turn to the clemency of his sovereign with a request for a permission which would most certainly have been denied him? We have among the papers of the claim a copy of the petition with which the deceased, finding himself, in January, 1854, passing with his family through Naples, and receiving from the police a new order of expulsion, had had recourse to his King for a revocation of that odious measure, which was denied him. To assume, therefore, that Baron Corvaïa, son of a political refugee, and himself driven from the Kingdom of the Two Sicilies and considered as an outlaw, should, shortly after his expulsion and during the most rigorous period of Bourbon tyranny solicit from his Government the above-mentioned authority, or make him fall under the incubus of failing to obtain it, seems contrary to all rules of justice and equity.

Corvaïa never solicited any permission, for it would have inevitably exposed him to a refusal which would have placed him in the attitude of disobedience to his King, whose faithful subject he still considered himself, as is abundantly proved by his above-mentioned petition of January, 1854, in which he styled himself a "good citizen." The umpire should particularly note this expression "good citizen" occurring in the petition written by Corvaïa himself and addressed to his King.

The Italian Commissioner holds that any tribunal called upon to decide whether the deceased baron had, under the circumstances, lost his nationality through this omission, the consequences of which it is sought to exaggerate in order to cause a rejection of the entire claim, would give a negative answer. In this sense particularly would tribunals of Italy decide it, who are truly competent in this respect, if we consider that that provision of law, *which had never been applied*, according to the solemn declaration in the Italian Senate of the minister of pardons and justice himself, Emanuel Gianturco, was subsequently abolished by the act of January 31, 1901, it having been recognized that the acceptance of foreign service lacks in general those conditions which warrant the assumption of an intention on the part of a citizen to renounce his original citizenship.

In every case the law which abolishes a provision having a penal character is retroactive, and Corvaïa, against whom the loss of citizenship had never been pronounced by the magistrate, should be given the benefit thereof, and through him to his heirs and descendants. The Commissioner for Italy observes besides that the services of Corvaïa in behalf of Venezuela had not the true and proper character of an employment, but were missions. The Venezuelan minister of foreign affairs, Giacinto Gutierrez, in a letter to the minister of hacienda, of March 18, 1856, declared having appointed him to a mission to France as envoy extraordinary and minister plenipotentiary. Corvaïa, in Washington as in Paris, acted as confidential agent; that is to say, in a capacity in which we must recognize the essence of a mission or extraordinary charge, and not an employment.

If afterwards other titles were conferred upon him, as those of envoy extraordinary and minister plenipotentiary in France, when he was in Paris endeavoring to foster emigration, which was in fact the principal object for which the Republic had sent him, it was only because under such title he could more readily place himself *en rapport* with the Imperial Government and be officially recognized by the French minister of foreign affairs.

Whenever the Italian code speaks of employments, it is in the sense as understood in the Kingdom, those into which one enters as a career at modest compensation with a view to future advancement into more important undertakings. The mission assumed by Corvaïa carried with it no assurance for the future, not even so much as a retired pension, and did not constitute an "employment" according to our law.

It never occurred to Baron Corvaïa that his operations in Europe and North America in behalf of Venezuela could involve a forfeiture of his original nationality or set up a legal bond of a permanent character between himself and the country for whom he was acting. He lent his services in deference to the President of the Republic, Joseph Thadeus Monagas, whose intimate friend he was, and as a personal favor, as well as to render himself useful to the land to which he had come in his youth, where he had raised a family, and increased his private fortune.

No sooner had his functions of minister from Venezuela to Paris ceased, they having been terminated by the retirement of Monagas from the Presidency, than Baron Corvaïa accepted the post of minister from Ecuador to the same capital. As he had no intention of changing nationality by the acceptance of missions under Venezuela, so also he could have had no thought of endangering it by undertaking similar functions for the Government of Ecuador.

These operations imposed upon him living expenses far in excess of the moderate salary granted him by the Venezuelan Government, and which, as proved by documents in the claim, was never fully paid.

The court of cassation of Belgium, by its decree of June 25, 1857, about the time Corvaïa was acting as Venezuelan minister in Paris, laid down the following maxim:

* * * la naturalisation est acquise. Tant qu'elle ne l'est pas il n'y a point de changement de nationalité.

Besides that of Cogordan, the umpire will doubtless remember the opinion of the eminent Italian jurist, Fiore, cited by the writer in his memorial in the Giordana case; that opinion is the synthesis of

the rulings in Italy whenever there was application of article 20 of the Sicilian code, afterwards replaced by the eleventh article of the Italian code now in force, and that prevail in principle. Says Fiore:

> Even if it were established that according to the internal law one should find himself bereft of one nationality without having acquired another, as we must, in accordance with international law, always eliminate the condition of a lack of determined nationality, so we should hold, as more in consonance with just principles, that such person is in the meantime a citizen of the country in which he was born (until he becomes a citizen of another), during the period intervening between the loss of one citizenship and the acquisition of another. (Fiore, Droit International Privé (Antoine), sec. 345.)

The same author observes:

> The loss of original citizenship should not be held as an accomplished juridical fact until it is proven that a new one has been acquired. (Ibid., sec. 344.)

We will see in proceeding that Baron Fortunato Corvaïa never acquired Venezuelan nationality.

In the work recently published entitled "La República Argentina y el Caso de Venezuela, por el Doctor Luis M. Drago, ex-Minister de Relaciones Exteriores," there is quoted in Spanish an article which appeared in "The Nineteenth Century and After," of April, 1903, from the pen of Mr. John Macdonnel, member of the supreme court of Great Britain, of the Institute of International Law, etc. At page 168 of said article in the aforementioned publication we read that the Ecuadorian Congress passed a law which contained (art. 5) the following provision:

> Foreigners who may have filled positions or commissions which subjected them to the laws and authorities of Ecuador can make no claim for payment or indemnity through a diplomatic channel.

And Mr. Macdonnel observes:

> It is almost needless to say that the diplomatic corps at Quito protested against this legislation. The United States Secretary of State denounced it as *subversive of all the principles of international law.*

In this affirmation of the Secretary of State aforesaid is found the proof that in the councils of the North American Government there prevails the principle advanced here by the Italian Commissioner, to wit, that the acceptance of missions and charges abroad, and particularly in South American countries, where there has been and is frequent recourse to foreign collaboration, does not involve a loss of nationality, since it is considered that there persists in the individual accepting such posts a right to claim, *per via diplomatica*, against the government which availed itself of his services, and that therefore his nationality persists as before.

The contrary theory is justly styled "subversive."

The honorable Commissioner for Venezuela has manifested his intention of sustaining also the following points: (1) That Fortunato Corvaïa forfeited his Italian citizenship because he left his country with no intention of returning, and (2) because he violated his neutrality.

To these exceptions the writer objects that Corvaïa left his country by reason of the proscription of his family from the Kingdom of the Two Sicilies, and therefore by no spontaneous act creating any juridical situation whatsoever; that he established himself in Venezuela at the age of 18, and when, by reason of his minority, he could not, either by implication or directly, decide his nationality; that the intention of

returning to the mother country must be assumed as persisting in the bosom of an exiled family; that when in 1854 Corvaïa not only manifested the intention of repatriating, but desired to settle with his wife and family in Naples, he was expelled by the Bourbon police, against which measure he unavailingly protested; that, finally, it is freely admitted that he who emigrates for the purposes of trade and commerce, as had been the case with the deceased, can not without further evidence be viewed as having the intention of definitely abandoning his original domicile, particularly as in the present case Corvaïa had not on arriving in Venezuela any settled purpose of establishing himself therein. He came to these shores seeking health. Only the force of circumstances decided his residence here, though with frequent and long absences.

The intention not to return should exist at the time of expatriation. The non-return may be brought about by a multiplicity of causes quite independent of the will of the emigrant, and has of itself no legal value.

The Italian Commissioner observes further that it does not appear that Corvaïa ever participated in the political affairs of the Republic in such a way as to constitute an infraction of neutrality, since his operations were always in behalf of the constituted government, from which alone he accepted offices. If the following of such a course toward the legal government of the country which then sheltered him were held to imply a violation of the duties of neutrality, then must the foreigner be compelled to refuse any assistance to the authorities of his abiding place and manifest both insensibility and ingratitude in not preoccupying himself with interests not identical with his own.

Fortunato Corvaïa favored Venezuela to the extent of his abilities, and now, when many of his credits toward the Government remain unpaid, there is hurled against him the charge of having violated his neutrality—a charge which from every legal and moral point of view should be rejected as unsustained. Never did Corvaïa participate in the political struggles of the country or associate with the revolutionists. He always remained a foreigner, and though he loved this country well enough he never consented to become Venezuelan, and Doctor Zuloaga can not produce a single act of his during his long sojourn here from which may be deduced his intention to become a citizen, and much less that he had done so.

Fortunato Corvaïa was the last scion of a family that had suffered for its country. His father lived exiled from his native land; his ancestors had filled public offices in the Kingdom of Naples. For centuries the Corvaïas had figured among the aristocracy of Sicily. Such a man will not readily abandon his nationality, to which he must of necessity be profoundly attached, and in him such an act can not be presumed in the face of a complete want of precise and explicit renunciation or the formal act of naturalization. Besides, the Corvaïas have always considered themselves Italians, and were recognized as such, not only by the representatives in Caracas and elsewhere of the Royal Government, but by the authorities of the Republic. In proof of this there is submitted an authentic extract from the register of the notarial acts of the Royal Italian legation in this capital, from which it appears that in 1877 Enrico Corvaïa caused to be legalized the diploma of the Equestrian Order of Venezuela of Bolívar, conferred upon him for services rendered to the Republic, and in the legaliza-

tion referred to the royal chargé d'affaires of that period, the Chevalier Massone, styled Corvaïa a royal subject.

There is likewise submitted an authentic extract of the general power of attorney conferred on the Baron Fortunato Corvaïa the 30th of October, 1877, by his son of the same name, for the transaction of divers affairs in Italy. In this document, the original of which is to be found in the same register of notarial acts, the royal Italian chargé d'affaires thus declares: "Appeared before the legation the *royal subject* Corvaïa Fortunato, of Fortunato, *native of Caracas*," etc.

Fortunato Corvaïa, *native of Caracas*, was styled an *Italian* citizen by the royal legation in 1877, and since he was a native of Venezuela, the quality of Italian citizen could not have been attributed to him, save and except as he *was the son of the Italian Baron Fortunato Corvaïa.*

The royal legation recognized Baron Corvaïa, ex-minister of Venezuela to Paris, as an Italian citizen, and the proof of this is evident and undeniable.

It is well known that Venezuelans can not, under their laws, assume titles of nobility. Now, the deceased had not relinquished his, nor did any of his male descendants. (See certificate of birth of Giuseppe Isacco Enrico Corvaïa, the certificate of decease of Lucio Corvaïa, the power of attorney of Teresa Campbell, of Fortunato, and Ricardo Corvaïa to the Signora Luisa, widow De Lara, and the copy of the dispatch of the Italian minister of foreign affairs, all contained in fascicle No. 2.) We might conclude from all this that never did the deceased or his descendants contemplate being local subjects. But there is more. In the same fascicle the honorable umpire will find a document emanating from the prefect of the department of Bravo, in the state of Guarico, Venezuela, under date of June 2, 1880, in which Enrico Corvaïa is styled an Italian citizen.

The Signora Luisa Corvaïa, widow of the Venezuelan general, Eladio Lara, was not pensioned by the Venezuelan Government, as she should have been, because she was a foreigner. It would therefore seem that the Corvaïas have been considered Italians, even by the authorities of the Republic, evidently because it was notorious that their father was originally Italian, and so remained to the day of his death.

The writer believes he has convinced the honorable umpire of the equity and substantial foundation of his argument. But in the event that the umpire should decide that Baron Corvaïa had ceased to be Italian, he would not for that have become Venezuelan. It is not deemed necessary to enter into a long discussion in support of this proposition. The conditions by which Venezuelan nationality is acquired are tacitly indicated in the fundamental laws and codes of the Republic. The members of the Corvaïa family never complied with the formalities necessary to that end. We may add that it does even appear, and until proof to the contrary is submitted by the Commissioner for Venezuela, it may be absolutely denied, that he ever took the oath of allegiance or any other toward this Government, and from this we may deduce his firm intention of remaining true to the nationality of his origin. A bond of allegiance between him and this Republic could not arise, because neither in the Venezuelan nor in the Italian legislature is such a juridical condition foreseen and contemplated. By the law of either country, one is a citizen or one is not.

The very word "allegiance" can not be exactly translated into either Spanish or Italian.

Besides, allegiance seems to be due solely to the sovereign, and the loyalty of the subject is to his king, his natural protector—a thing almost inconceivable in a country governed according to republican principles; but even were it admitted that there were such a bond between an individual born in a monarchy and a country under republican rule, there would still be required the formal and essential oath of allegiance, which we know, and as will more clearly appear further on, he never took.

Ernest Lehr (Elements of English Civil Law, par. 38), referring to this, says:

> To within quite a recent period England was a country of perpetual allegiance. Whoever was born on British soil was a British subject, and could not cease to be such without the consent of the prince.

Calvo (Dictionary of Public and Private International Law, p. 35), speaking of the word "allegiance," says:

> It is the name which is given in England to the obedience which every subject owes to his prince and his country. Any individual born a subject of the British Crown can never, by a mere act of his will, dissolve this obligation and break the bond of allegiance which unites him to the sovereign of Great Britain.

This doctrine of allegiance is thus summed up by Blackstone[a] and Stephen:

> Natural allegiance is such as is due from all men born within the king's dominions immediately upon their birth. * * * An Englishman who removes to France, or to China, owes the same allegiance to the king of England there as at home, and twenty years hence as well as now. For it is a principal of universal law, that the natural-born subject of one prince can not by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance to the former, for this natural allegiance was intrinsic and primative, and antecedent to the others, and can not be devested without the concurrent act of that prince to whom it was first due.

These definitions and opinions confirm the principle that the bond of allegiance can not be conceived except as due a sovereign, and obviously that of the country of birth, not to be contracted toward another prince, and in every case with a solemn oath of fidelity.

Instead of this, we see Corvaïa, in 1854, when he had already filled the post of confidential agent of Venezuela in the United States, and on the eve of accepting a mission to France, making an open act of submission and devotion to his legitimate king. Let it be noted, besides, that the first law, in the order of time, according to which employees of Venezuela were obliged to take an oath—not carried into effect, as we know from the Giordana case[b]—was promulgated May 29, 1865, that is, at a time considerably after Corvaïa had accepted the mission referred to, which completely excludes the idea of his having taken any oath whatever.

The Italian Commissioner must therefore insist upon his position that the Corvaïa claim can not in any case be held to be an originally Venezuelan claim. He believes it to be Italian, since the deceased baron must have had a nationality, if we assume with Folleville (Studies of Private International Law, p. 285) that the legal status of a person without a nationality is "a more singular and unjustifiable

---

[a] Page 369.

[b] Not reported.

anomaly than would be a duality of fatherlands;" but in any conceivable hypothesis, he maintains that this claim must constitute for Venezuela an essentially foreign claim.

The honorable Doctor Zuloaga has declared to the writer that other exceptions will be submitted, and will sustain the forfeiture of the right of the Corvaïa heirs to claim before this international tribunal, either because the damages upon which their claim is based were suffered by the deceased in a period long since passed, or because he does not appear among the Italians indemnified under the provisions of the protocol of La Ville-Jiménez, of October 7, 1868, or because the heirs did not have recourse to the royal Italian legation in 1894, when, under Count Roberto Magliano de Villar S. Marco as minister to Caracas, it drew up an agreement in regard to claims with the Government of the Republic. In rebuttal, the Italian Commissioner recalls, in the first place, his arguments in the Gentini case, with reference in general to the subject of prescription in international relations, and observes, in addition, that all the credits of the Corvaïa heirs are of such character that the Venezuelan Government can not have ignored their existence, and that therefore, in conformity with the principles admitted by the honorable umpire in the claims of Giacopini[a] and Tagliaferro,[b] prescription could not in anywise operate against them. It appears, besides, from various documents found in the papers of the Corvaïa claim, that neither the deceased baron nor his heirs ever had the least intention of abandoning the rights which to-day, under more propitious conditions as to time and tribunal, they propose to defend, which intention has, on the contrary, been repeatedly manifested by them.

The protocol of La Ville-Jiménez was subscribed for the purpose of effecting an amicable settlement of all Italian claims up to that time presented to the royal Italian legation. It contains no declaration on the part of the chargé d'affaires indicating the abandonment or exclusion of any claim not comprised among those contemplated in this international act. The words "with the addition of this sum the total amount of all the claims is 1,154,686 pesos," and "the Italian claims," on the meaning and scope of which the honorable Commissioner for Venezuela bases his argumentation, would be superfluous unless accepted as referring to the claims presented, known, or liquidated at the time the above-mentioned protocol was stipulated.

To give an unlimited interpretation to those words would be equivalent to prejudicing legitimate interests, and certainly the chargé d'affaires would never have assumed the responsibility of shutting out claims of which for obvious reasons he could have had no knowledge, without special authority from his Government, which he surely never had. If the Venezuelan Government had intended that every anterior claim should be liquidated by the above protocol, it would undoubtedly have insisted upon an explicit clause or declaration therein to that effect—something it did not do then or during the preliminary discussions.

As a matter of fact, in the report of this protocol furnished by the legation to the minister of foreign affairs at Rome, an authentic extract of which is herewith inclosed, mention is made of "the claims of royal subjects which had been recognized and admitted by the Venezuelan Government." There is no mention of all claims, and it is permitted

[a] Page 765. [b] Page 764.

to be implicitly but clearly understood that there existed other claims for which diplomatic action remained reserved.

In the partial settlement of claims obtained by Count Magliano in 1894 only those were examined which arose from damages and requisitions of the revolution resulting in the elevation of General Crespo to the presidency. This is established by the tabular statement of claims for indemnity of that period submitted in the original to the examination of the honorable umpire, written by Minister Magliano himself, special attention being invited to page 4 of the statement marked "B" in red, in the column of remarks, in which may be read, opposite the entry of claim of Stefano Giajer del fù Giovanni, these words:

This not being a case of damages occasioned by the civil war, but by an alleged abuse, the royal legation has decided that it can not be accepted, and the claimant should appeal for redress to competent authority, in conformity with existing law.

Therefore if the Corvaïa heirs did not present their claim to the legation at that time, it was undoubtedly because it would not have been received thereby. For the rest, has not the Mixed Commission liquidated claims arising out of the war of 1892, notwithstanding the rule laid down by Count Magliano?

Claim No. 199, of Giuseppe A. Menda, accepted by the Venezuelan Commissioner himself, was for requisitions made in 1892, and others of the same nature have likewise been accepted.

Did not the Commission, notwithstanding the opposition of the Venezuelan Commissioner, settle claims of the period of 1898–1900, though not included in the ultimatum of 1902, and in the sum of 2,810,255 bolivars obtained by the protocol of Washington of February 13?

It were well to recall the claim of Massardo, Carbone & Co., which entailed a long discussion and a decision of the honorable umpire sustaining the contentions of the Italian Commissioner.

Have we not awarded indemnity in claims for damages arising in the period 1871–72, in spite of the rulings of Magliano and Riva?

The above-mentioned protocol of Washington makes no such restrictions, and admits all Italian claims without distinction to the examination of the Commission, excepting only those already liquidated and those of holders of bonds of the foreign debt.

To demonstrate how unjust and contrary to law and equity is the theory opposed to that advanced by the Italian Commissioner one example will suffice.

Recently the Italian citizen, Biagio Lamberti, presented himself before the royal legation and exhibited absolute and undeniable proof that in 1899 he supplied military musical instruments to the Venezuelan Government to the value of 1,430.55 bolivars. Lamberti, who holds an order from the war office in his favor for the sum named, signed by Gen. Diego Bautista Ferrer, on the minister of hacienda, has not, in spite of repeated efforts, been able to obtain payment. The said Lamberti, who resides in Caracas, did not want to have recourse to this Commission, and only now comes to seek the aid of the royal representative to obtain his due, delayed until now with no apparent motive. Can it be said that because Lamberti very patiently refrained from formulating a claim before the Commission, he has forfeited the right to invoke the assistance of the legation, and that it must refuse to protect him?

The Washington protocols do not peremptorily declare that claimants shall either submit their claims or forfeit them. They have simply provided for the installation of tribunals in equity, before which claims may be judged, and opened a way by which claimants may obtain speedy justice; but if any among them have not desired to avail themselves of these means, or thought it inopportune to do so, they have surely not on that account renounced any of the means of redress to which they are entitled by common law.

The conclusion to which the Italian Commissioner arrives is that while the protocols furnish a mode of liquidating claims for indemnity, in the absence of a clear and explicit declaration to the contrary, they were never intended to exclude future diplomatic action, or preclude the possibility of claimants whose cases have not been considered of having recourse to the authority of their country. Now, this clear and explicit declaration the protocol of 1868 does not contain.

The reasons why Baron Corvaïa did not press his claim in that year are unknown to us, but to argue from that one fact that he no longer considered himself an Italian, while all else proves the contrary, or that he, and therefore his heirs, should have lost the right to claim, is unjust.

This abstention may be explained, rather by the affectionate regard he had for this country, or the important personal relations which always induced him to hope, even to the day of his death, that he would be able to bring about an amicable settlement of his numerous credits against the Government, or by his frequent and prolonged absences in Europe. At that time his credits did not really constitute a claim, because the measures he and those interested with him had instituted for a direct reimbursement were still pending, and besides, while other royal subjects were presenting claims, he had still so much faith in the strength of his relations with the Government that in that same year (1868) and subsequently, he continued to advance it money.

Let it be noted further that prior to 1868 Italy had never had a settlement of claims with Venezuela; that the kingdom of the Two Sicilies had never had a diplomatic representative in Venezuela, and that that of the King had only existed since 1864, with frequent interruptions; to say nothing of the fact that while other nations had secured settlements through mixed commissions, Italy had never had a commission until after the blockade, so that, generally speaking, there had been no opportunity for Italian citizens to have recourse to the justice of international tribunals.

If Baron Corvaïa had formally pressed his claim through diplomatic channels he would have been charged with ingratitude. Having shown himself moderate, courteous, and forbearing he is rewarded in having heirs told that because their ancestor had made no claim (which is not strictly true) they had forfeited their right to do so.

This is a style of argumentation and judgment that does not appear to be inspired by those principles of absolute equity which should constitute a guide for the Mixed Commission.

This being premised, it is pertinent to examine, from the point of view of citizenship, the status of each of the Corvaïa heirs, as much in the warranted supposition that the honorable umpire will admit that the deceased never abandoned his nationality of origin as in the scarcely probable hypothesis that this quality will be denied him,

while admitting him to be no Venezuelan, it being out of the question to consider him a citizen of this Republic.

María Teresa Corvaïa, first-born child of the deceased baron, married an Italian, Signor Pasquale Miccio, living, and is therefore certainly Italian.

Margherita, fourth daughter of the deceased baron, married to Baron Carlo Bottini, an Italian citizen, and therefore she, too, is an Italian.

Giuseppe Isacco Enrico, sixth son, was born in Naples. If his father is held to be Italian there can be no doubt as to the nationality of the son. If his father is held to have lost his original citizenship, Enrico should nevertheless be considered as Italian, as he was born in Italy after his father had lost his citizenship, and all the more so in that his father had not acquired another nationality. A careful study of article 5 et seq. of the Italian civil code will result in an absolute conviction that Enrico Corvaïa is not and can not be other than an Italian.

He has, in any case, a true and undoubted legal status as an Italian citizen, recognized, as has heretofore been said, as well by Venezuelan authority as by the royal Italian legation. His name is inscribed in the proper register of the legation itself, to which he exhibited, not many months since, a certificate of the census of Paris, where he customarily resides, in which he declares himself Italian, and a passport of August, 1903, from the royal embassy in that city, in which he is likewise styled an Italian. What nationality would the honorable Commissioner for Venezuela ascribe to Enrico Corvaïa?

Irene, deceased, born in Caracas, married Gen. François Ernest Le Plus, became French by said marriage, and left heirs who are all of French nationality.

Fortunato, third son, and Ricardo, fifth son, are Italians, according to the law of Italy, because they are the sons of a citizen. The first, it has been seen, was so considered by the royal legation up to 1877. For the honorable umpire will no doubt take into account the certificate of identity drawn up at the royal Italian embassy at Paris, from which it appears that both are recognized as royal subjects, contained in book No. 2 of the claim, as well as the circumstance that they have not since many years lived in Venezuela and had never established a domicile therein.

Lucio, eighth son of the deceased baron, was an Italian, because he was born in Paris of an Italian father. He died, leaving two children, Fortunato and María Louisa, both born at Barquisimeto, Venezuela, and a widow, also born in the Republic, now married to a Venezuelan. The two children are Italians by the laws of Italy—article 4 of the civil code. It is not denied that they were born and reside in Venezuelan territory and the former decisions of the umpire are not lost sight of, but we reserve our opinion on that point.

The Signora Luisa Carmela Corvaïa, who presents the claim, widow of the Venezuelan general Eladio Lara, was born in Paris. There can be no doubt as to her Italian nationality, if the same nationality be accorded her father.

Besides, according to article 14 of the Italian civil code, the native woman who marries a foreigner becomes a foreigner, since always by the fact of matrimony she acquires the nationality of her husband.

Article 18 of the Venezuelan civil code provides that the foreign

woman who marries a Venezuelan acquires all the civil rights of a Venezuelan and retains them during her husband's lifetime.

Article 17 of the same code provides that foreigners shall enjoy the same civil rights as Venezuelans.

The Signora Luisa Corvaïa De Lara has not, therefore, by the fact of her marriage with a Venezuelan, acquired in fact Venezuelan citizenship, but only the *civil rights* proper to Venezuelans—those rights which are generally enjoyed by foreigners in Venezuela. She has not on that account lost her Italian nationality.

Even if by an interpretation too sweeping, and to our mind unwarranted, it were desired to make these rights—the civil rights referred to in article 18 of the Venezuelan civil code—equivalent to nationality, which seems absolutely contrary to Article VIII of the Venezuelan constitution, which does not number among Venezuelans the foreign women married to local subjects, this quality would have been lost to her by the fact of her widowhood, and would therefore *ipse jure* have resumed her former nationality, either on the principle that one can not be without citizenship, or by a logical and pacific application of article 14 of the Italian civil code, and this notwithstanding that she, having lived in Italy after the death of her husband, as shown by documents in No. 2 of the claim, had not made the requisite declaration before the proper official (not considered necessary for the reasons above set forth) of her intention of living there.

If it is not admitted that Baron Corvaïa preserved his Italian citizenship, it will be somewhat difficult to establish the nationality of his daughter. It might be contended that being born in Paris she must be French.

Teresa Campbell, widow Corvaïa, was born of English parents in Caracas, and married Baron Fortunato Corvaïa in 1846, being now a widow, as shown by certificate above mentioned as having been recorded at the royal embassy in Paris, and having resided in Europe since the death of her husband. If the latter be considered as Italian she must likewise be so considered, since according to principles admitted by the umpire, and given her prolonged residence abroad, article 19 of the local civil code could hardly be applied to her case, whereas she might very properly invoke article 9 of the Italian civil code which provides:

> The foreign woman who marries a citizen acquires citizenship and retains it even as a widow.

If, then, the deceased husband is regarded as having lost his Italian nationality, it will be for the umpire to decide whether or not his widow, under the circumstances, may appear as a claimant before this Commission.

Summing up, then, under the most favorable hypothesis, if the Italian origin of the claim of the deceased baron be admitted, all his heirs should be admitted to share in the indemnity here claimed. If this view is not to prevail, but it be recognized, as we confidently believe, that Baron Corvaïa never lost his Italian citizenship, according to precedent decisions of the umpire, then only the heirs of Lucio, the only ones born and living in Venezuela, and the heirs of General Le Plus, who are French, would be excluded from participating in the award.

Under the most unfavorable hypothesis (we will not even suppose that the baron will be considered as being Venezuelan) in which the

deceased will be judged to have lost his Italian citizenship, there would always remain, as undeniably Italian, Giuseppe Isacco Enrico Corvaïa, María Teresa Corvaïa Miccio, and Margherita Corvaïa Bottini. These three descendants could not in any case be shut out from participating as Italian subjects in the liquidation of a claim which was foreign from its very origin.

The Italian Commissioner expects from the umpire a decision founded on the highest rules of justice and equity; and in calling attention, with regret, to the steps taken by the interested parties, with no practical results, for a direct settlement with the Government, he urges that in rejecting the claims of such of the heirs as may not be deemed recognizable before this Commission, it be without prejudice to their interests before any other tribunal, as, for instance, before the local courts, and in the case of the heirs of General Le Plus, and possibly of the Signora Luisa Carmela, widow Lara, through the intermediary of the French legation in Caracas.

Extract from the register of the notarial acts of the royal Italian legation at Caracas for the year 1877.

Legalization of the signature of Dr. Andueza Palacio on the diploma of the Order of Bolivar, with which was invested the royal subject Enrico Corvaïa for services rendered to this Republic.

Caracas. * * *

[L. S.] CAV. P. MASSONE.

N. B.—The royal chargé d'affaires omitted the date in the foregoing certificate, but this, in the register of notarial acts, uninterruptedly kept from December 12, 1864, to January 21, 1889, is found between an act made June 2, 1877, and another made the 26th of the same month. It therefore is certain that the legalization referred to was made in the period elapsing between the first and second dates above named.

The royal chargé d'affaires.

C. ALIOTTI.

Extract from the register of the notarial acts of the royal Italian legation at Caracas for the year 1877.

This day, 30th October, 1877, at Caracas, in the office of the royal Italian legation, before us, Cavaliere Pasquale Massone, chargé d'affaires of His Majesty the King of Italy, in this residence, etc., appeared the royal subject Corvaïa, Fortunato, of Fortunato, a native of Caracas, freeholder, who declares as follows, etc.:

(Here follows the full power of attorney to his father, Fortunato Corvaïa.)

A true copy:

The royal chargé d'affaires.

C. ALIOTTI.

Extract from the register of correspondence of the royal Italian legation at Caracas with the Italian minister of foreign affairs.

CARACAS, *January 30, 1869.*

MR. MINISTER: As a supplement to the report No. 47 of this series, dated October 20, by which there was sent to your excellency a copy of the protocol of the claims of royal subjects which have been acknowledged and admitted by the Venezuelan Government, I have the honor to inclose herewith an analysis of the claims themselves, to the end that your excellency may know the nature of them, and what were the rules determining the awards made to these claimants, etc.

G. GALLI,
In Charge of the Legation.

A true copy:

The royal chargé d'affaires.

C. ALIOTTI.

ZULOAGA, *Commissioner:*

The heirs of Mr. Fortunato Corvaïa claim the sum of 16,438,661.23 bolivars, which they say the Government of Venezuela owes them for various negotiations which their predecessor in interest Corvaïa had with the Government, and for interest accruing upon the sums owed. The claims are until now generally unsubstantiated, or they have informal proofs; but the preliminary question of the nationality of Corvaïa arises, and even the question of the nationality of the claimants themselves, and these are the questions which are now submitted to the honorable umpire.

Mr. Fortunato Corvaïa, as appears from the biography presented by the claimants, came to Venezuela in the year 1838, immigrating with the intention of establishing himself in the gold mining regions of Guayana. He did not come to Guayana, but remained in Puerto Cabello, where he was for three or four years, and afterwards removed to Caracas, where he established himself as a printer and engaged in other business. In the year 1846 he married, in Caracas, Miss Teresa Campbell, a Venezuelan, and on the 24th of January, 1848 (which is a celebrated day in the political history of Venezuela, because of the *coup d'état*, which upon that day the chief of the Government performed), the biography to which we refer says that Corvaïa was in Congress, performing the duties of political and literary reporter; that there he discovered the plot against the life of General Monagas, and that, exposing his own life, he went out to given notice of it to the wife of the President of the Republic. (This really has never been known in Venezuela, or was there any such plot.) In the same year, 1848, Gen. Hosea Antonio Páez, representative of the so-called conservative party, and who already had been twice President of the Republic, took up arms against Monagas by virtue of the events of the 24th of January, and Corvaïa left for the United States of America to seek armament and ships of war for General Monagas, leader of the liberal party.

In the following year, 1849, the Government named Corvaïa in order that he might confidentially negotiate with the minister of the United States of America, with the object of strengthening relations with the American nation. In June, 1850, it appointed him confidential agent to said Republic. In January, 1851, the minister of foreign relations of Venezuela addressed himself to the Secretary of State of the United States to tell him—

> that the President of the Republic, after receiving notice that Páez and his partisans were attempting to form an exploitation in the United States, in order to renew their attempts against the institutions and the legitimate government of this country, has seen fit to send there a diplomatic agent, who, observing the conduct of the Venezuelans expatriated because of their political crimes, might give opportune notice of this monstrosity of their plans, and prevent their being put into effect; that with these objects and that of promoting the friendly relations which exist between both countries, has accredited Mr. Corvaïa in the character of chargé d'affaires to the United States.

A little later Mr. Corvaïa goes to Europe with various missions, and among others a mission to the Holy See. In March, 1855, the Government appointed Corvaïa confidential agent to various courts of Europe, with the object of promoting immigration, and in March, 1856, he was appointed envoy extraordinary and minister plenipotentiary of Venezuela to several courts of Europe, the consuls in said countries, in conformity with the law of 1824, being, therefore, under his supervision, and he was minister until June 1, 1858, when he

ceased to hold this office because of the revolution which had triumphed in March of that year.

In the year 1860 Corvaïa goes to Venezuela and is put in jail. At that time Gen. Hosea Antonio Páez was dictator; he ruled the conservative party, and the imprisonment of Corvaïa was only the political imprisonment of the constant servant of Monagas against the conservative party. In 1863 the liberal party again triumphed, and Corvaïa again goes to Venezuela and enters anew into favor, and negotiates with the Government. If he had not returned since 1858, it was as he himself says, in a note of December, 1866, which is found in Record I, "by reason of said revolution," because of the fear of persecution by his political opponents. In this same record (I) a statement of Corvaïa of his services as minister appears. He enumerates them thus:

I believe that I can assert without fear of contradiction that my assiduous efforts and labor have brought advantageous results. Among these the recognition of the nation by the Russian and Ottoman empires, by the * * * of the Two Sicilies and Portugal, especially in the capitals and important cities of Europe; * * * I negotiated treaties of friendship, commerce, and navigation with Prussia and the other states of the "Zollverein;" I concluded another with Sardinia, * * * the present Government of your excellency (1863), ratified the second of these treaties, and have signed with *Italy*, which is the same one as has just been published as a law of the Republic, in which there were established two principles of the greatest importance for this country: 1. That which designated the only sort of damages and injuries for which both parties would be liable in case of revolution; that is to say, those caused by the legitimate authorities, excluding, therefore, those arising from any other sources. 2. That which makes arbitration obligatory as to the disputes which arise between the two countries. On the other hand, I succeeded in obtaining a very advantageous adjustment of the claims of the French Government on account of the efforts of the law of suspension, and almost paid what was owed by this Government. I did the same thing with the English Government in the matter of the claim of Fitzgerald, and in all these negotiations I have only borne in mind the good name of the nation. * * * Finally, upon giving up my diplomatic functions on account of the events of 1858, I was honored by Ecuador. * * *

Corvaïa from the time of his return to Venezuela remained in the country, and died in 1886 in the village of Maiquetia, situated on the coast very near La Guaira.

This is the life of Corvaïa, as appears from the proofs presented by the claimants. From it, it appears in a clear manner that Corvaïa constantly intervened in the political affairs of Venezuela; that he was a high official of state from 1848 to 1858; that in 1848 he sought arms for Monagas, and later was a secret agent of the liberal party to watch the acts of Páez, leader of the conservative party; that in all the liberal administrations he enjoyed very special favors, and carried on lucrative negotiations with the Government; that during the administration of the conservative party he was persecuted as a political enemy, and that in order to avoid this he remained abroad during this period. That these facts established it follows: 1. That the heirs of Corvaïa can not claim before this Commission, because it is a national recognition, and under the principles of national law diplomatic protection is not accorded to individuals who mix in the political affairs of another nation. 2. That Corvaïa, born in the Two Sicilies in 1820, has lost his nationality, since in the Two Sicilies the Napoleonic law, with very few modifications, was in force, and among the articles referring to the loss of nationality there were articles 17 and 18 of the Napoleon code, which provides his loss of nationality by the fact of absenting himself in another country without the intention of returning, and also by accepting public employment from a foreign govern-

ment. As is seen, these two circumstances apply to Corvaïa, the first because it is evident that a man who as he did came to Venezuela in his youth and without resources, married there, made his fortune there (almost entirely by political negotiations), who there raised his family, who was there honored by distinctions, and there died, had considered Venezuela his true country, without the intention of returning to his native land, to which nothing called him.

Because of the code of Napoleon, which in the premises is in accord with the Italian code, and provides for the loss of nationality by one accepting public employment from a foreign government, there is no stronger case in which to apply it than in that of Corvaïa, who was for the space of ten years the confidential agent, chargé d'affaires, and minister plenipotentiary of Venezuela; who had been received in this capacity in the country which it is now attempted to claim as his fatherland, and had obtained from the Governments of the Two Sicilies and of Sardinia political advantages of paramount importance.

The question as to the loss of nationality was discussed in this Commission in the case of Giordana,[a] but he was an assistant engineer in the service of the minister of public works, and the honorable umpire of this Commission was of opinion, bearing in mind the humble character of the employment, that it might be considered that he had not lost his nationality; but he said that he reserved his opinion with respect to a case in which the employment was of more importance. After the office of the President of the Republic, I do not see what authority can be higher or more important than that which Corvaïa for many years exercised, as representative of the Republic in the United States and the courts of Europe, entering into agreements, and having the consuls subordinate to him.

The theory of the loss of nationality by the acceptance of employment does not admit of any exception, according to the commentators on the code of Napoleon, and it is applied rigidly. The excuses which may have been made can not influence a matter now of fifty years ago. In this question of the loss of sovereignty I do not see how discussion is possible. The law of the Two Sicilies is definite in declaring that Corvaïa was not a Sicilian, and it is not to be supposed that a state claims from another state for the benefit of anyone whom its own laws declare is not a citizen. This is a matter of strict right and as to which the Commission ought to strictly apply the law of the case. The citation of authorities which the honorable Italian Commissioner makes are therefore out of place, since they refer to personal opinions and assumptions, more or less founded for the solution of the conflict of nationalities. Besides, some of the citations of my honorable colleague might be considered as opposed to his opinion, and I might cite paragraphs of Fiore which are. Based, therefore, on the three reasons mentioned, that Corvaïa had taken part in the affairs of the country, had lost his nationality by establishing himself in Venezuela without the purpose of returning to the Two Sicilies, and because he accepted public positions in Venezuela, he claims the Corvaïa claim is inadmissible. With respect to Corvaïa, moreover, there is a very serious circumstance, and it is that he, when the Two Sicilies were annexed to Italy, was not a Sicilian, nor was he domiciled in the Two Sicilies, an indispensable requisite in order that the annexation might affect his

[a] Not reported.

nationality. The Hon. Mr. Agnoli, Commissioner for Italy, has insinuated that although Corvaïa had lost his nationality (had never been a subject of the King of Italy), this does not hinder his heirs from claiming internationally. This would be an absurdity in law. No one can transmit to another more than what he has, and if Corvaïa could not have claimed the protection of a foreign nation against the Government of Venezuela, it is not possible that his heirs should have that right. I am not aware that the Hon. Mr. Ralston would give a contrary opinion, as my honorable colleague asserts. It is to be observed that Corvaïa never thought of asking protection from the Government of Italy for any claim. The fragment of a *copy* of a letter which is presented in order to show that Corvaïa believed he had the right to a claim has reference to a French claim.

Since Corvaïa was not an Italian, this is sufficient to exclude the claim, and it is useless to enter into a study as to the nationality of the actual claimants. Nevertheless, these are not Italians.

Teresa Campbell, widow of Corvaïa, is a Venezuelan, born in Caracas in 1831, and if by the fact of her marriage she may have changed her nationality, as a widow, she recovered her original citizenship. The case would already have been decided in that of the widow Brignone,[a] but in the present case it is my opinion that the wife of Corvaïa never has been an Italian.

Irene Corvaïa, deceased, married Gen. Francis Le Plus, and was born in Caracas; she was, therefore, never an Italian, and her heirs are French.

Fortunato Corvaïa was born in Caracas in 1849. He lived in Venezuela for many years, and to-day resides in Paris. He is, therefore, an Italian.

Ricardo Corvaïa was born in Caracas in 1851, lived in Venezuela for many years, and to-day resides in Paris. He is therefore a Venezuelan. It is to be noted that the fact of residence in France does not even give the character of residence to those who live there.

Henrique Corvaïa was born in Naples in 1853. He has always lived in Venezuela, and he has a wife and children here, and at the time of his birth, it appears that Corvaïa was acting in the capacity of confidential agent of Venezuela. At the time of the birth of Henrique Corvaïa his father had lost his nationality, and he could not, therefore, be claimed by Italy as a national. (See art. 11, Italian code.) It is to be borne in mind that these claimants who call themselves Italians have never shown by any direct or legal proof that they desire to be Italians, and it does not appear that they have rendered military services in Italy.

Luisa Corvaïa, widow of Lara, was born in Paris in the year 1857, her father being minister plenipotentiary of Venezuela. She was born in the legation; she is the widow of a Venezuelan general, and has always lived in Venezuela. She is therefore a Venezuelan. Italy can not claim her as an Italian. Margarita was born in Caracas, married in 1879 Carlos Bottini, a Frenchman. Her husband was naturalized an Italian in 1888, and if this naturalization had any influence, in no case could it give her the right to appear as an Italian claimant, because of an act long preceding the naturalization. Moreover, Margarita Corvaïa, French, because of the nationality of her husband, did

[a] Page 710.

not acquire Italian nationality by his naturalization, since, according to the French rule, naturalization is personal. (Fiore, Droit International Privé, p. 379.)

Teresa Corvaïa was born in Caracas in 1847; married Pasquale Miccio, an Italian; legally separated from her husband in 1873, and resides in London. If she preserved the Italian nationality by virtue of the citizenship of her husband, in reality very weak ties bind her to her country.

An order of expulsion from the Two Sicilies has been made use of as proof that Corvaïa retained his nationality. I do not see why. This order might also have been made against a stranger or a man like Corvaïa who could not rely upon the nationality of the Two Sicilies. Nothing in these documents leads us to suppose that Corvaïa had thought that he preserved his nationality. Besides, we do not know the antecedents of this matter. The fact that Corvaïa or his family were not friends of Bourbons and therefore had to ask permission to hold a public office in Venezuela, since it would have been denied it, is an argument adduced which is turned against the claimants, since it leads us to believe that Corvaïa was appointed against the desire of the Government of the Two Sicilies.

For the reasons set forth, I am of opinion that, without entering into the merits of the case, the claim of the heirs of Corvaïa should be rejected.

On this occasion only the nationality as a previous question has been considered. Every other question, including that of prescription, I shall consider upon their merits.

In order to answer the last paragraph of his honorable colleague the undersigned has to say that, from information which he has obtained in various public offices, it appears that at no time have the heirs of Corvaïa taken any sort of action, or made any sort of claim, and that the first notice which has reached the Government of Venezuela of the existence of the claim came to it when it was made known that it would be presented to this Commission.

AGNOLI, *Commissioner* (additional opinion):

The Italian Commissioner takes cognizance of the abandonment on the part of the Commissioner for Venezuela of the prejudicial exceptions previously formulated by him relative to the forfeiture of the right of the Corvaïa heirs to defend their interests before this Mixed Commission, these exceptions being based on the circumstance that neither the deceased Baron Fortunato, in 1868, at the time of the stipulation of the protocol of De la Ville-Jiménez, nor the heirs themselves subsequently, prosecuted their claim against the Government of the Republic through the intermediation of the royal Italian legation.

Therefore the undersigned holds it as useless now to submit to the umpire a list of the claims for indemnity which had occupied the attention of the Italian minister, Count Magliano, and mentioned in my memorial of the 12th instant, on page 19.[a]

The objections raised by the Commissioner for Venezuela in this Commission can therefore affect but one point—that of nationality. The Italian Commissioner presents, as complementary to the arguments used by him in sustention of his opinion concerning the acceptability

[a] Page 790.

of the present claim, and in reply to the objections of the Venezuelan Commissioner, the following observations:

1. It is not established that Baron Corvaïa ever went to Naples as minister for Venezuela, that he presented his credentials, or that, finally, his appointment as a diplomatic representative of this Republic to the Bourbon court exceeded the limits of a simple designation not followed by an effective accomplishment of plenipotentiary duties.

There is, on the contrary, a strong presumption that Corvaïa never did actually perform them officially, given his status as a Neapolitan subject, descendant of political exiles, and himself expelled from the Kingdom of the Two Sicilies.

There is in fact a proposed treaty with the Two Sicilies, but this document is simply a project—it bears neither date nor signature, does not give the names of the negotiators, and is not in the writing of the deceased baron. It need not even have been submitted to the Commission, and from it one proof alone can be drawn—that of the utter sincerity of the claimants.

2. The letter addressed under date of June 26, 1885, by Baron Fortunato Corvaïa to the minister of the King of Naples at Paris, Marquis Antonini, concerns a simple exchange of publications. At that time the baron was not minister, and was not considered as a member of the diplomatic corps; as a matter of fact, the reply of Marquis Antonini is addressed to Signor F. Corvaïa, without official qualification whatsoever.

3. Concerning the acknowledgment of the Republic of Venezuela on the part of the Neapolitan Government, the credit for which was claimed by Corvaïa in a document, the importance and authenticity of which will be hereafter referred to in this paper, it is to be understood as resulting from his private negotiations, and nowhere does it appear that it was brought about officially. We do not even know at what time this transaction took place.

4. The document contained in book I, a letter of the deceased to the President of the Republic, dated January 14, 1863, in which he requested payment of some of his credits, is not in the handwriting of the deceased, but is a copy, and it is not known whether the original was ever sent. In it the deceased relates his services to the Venezuelan Government, and with all due respect to his memory be it said, appears to indulge in momentary exaggeration. As a matter of fact there has never been, so far as can be learned from a research of the old Italian treaties, a treaty between the Kingdom of Sardinia and the Republic of Venezuela, and Corvaïa had never been a subject of the King of Sardinia, and his relations with that Government, whatever they may have been, could have had no influence on the nationality of the deceased.

As regards the treaty between Italy and Venezuela of June, 1861, it may be admitted that the deceased baron had privately collaborated in its preparation. I say, "it may be admitted," because there is nothing definite with regard thereto. It can not be denied, though, that this international agreement was stipulated nearly three years after he ceased his functions as minister plenipotentiary for Venezuela; that it was signed in Madrid, where it does not appear that he was present officially or otherwise; that the representatives of the two countries were Mr. Fermín Toro for Venezuela, and Baron Romualdo

Tesco for Italy, both being ministers plenipotentiary at the court of the Queen of Spain. The name Corvaïa does not appear therein.

5. The right, so far as regards the Italian heirs, of a person who had, for instance, lost this nationality without acquiring that of Venezuela, to claim before this Commission is certainly not absurd, since the claim would, in such case, be of foreign origin. The umpire has already so decided.

The undersigned holds that the foreign holders of claims against Venezuela, coming to them by inheritance and not purchased with a view to prosecuting them, have a right in law and in equity to have recourse to diplomatic aid in the prosecution of their claim even though it had originally been the property of a local subject, and that therefore this Commission would be competent to pass upon such cases.

This principle has been recognized as just in prior Mixed Commissions as well as by the council of the contentious diplomat in session at Rome.

6. The letter written by Corvaïa to his daughter Luisa, dated February 18, 1885, expresses the hope that the diplomatic convention then concluded between France and Venezuela would facilitate the settlement of his claim. I can not see that it would be possible to deduce from the copy of this document that has been shown us anything but the intention on the part of the deceased to avail himself of diplomatic means in securing a recognition of his rights. It is out of the question to argue that it was his intention at the opportune moment to appeal to any legation other than the Italian, since he was not born French, neither had he acquired that nationality.

7. The honorable Commissioner for Venezuela affirms that Corvaïa was not a Neapolitan subject at the time of the annexation of the southern provinces to the rest of Italy, and calling attention to the fact that he was not then living in the Kingdom of the Two Sicilies, concludes that the deceased could not have acquired Italian citizenship.

In regard to this it is worthy of note that the question as to whether or not Baron Corvaïa was a Neapolitan citizen in 1860 is precisely the point at issue, and that therefore the assertion of the honorable Commissioner would seem to imply a begging of the issue; now with regard to the effect, so far as the citizenship of Neapolitan emigrants is concerned, of the annexation of the Kingdom of Naples to the other Italian provinces, taken from the Monarchy of Savoy, it is well to remember that there was no cession of a part of the territory of said State, but an incorporation of the whole Kingdom of the Two Sicilies with that of Italy; the Bourbon dynasty was deposed, and the Neapolitan State, as a political autonomy, ceased to exist.

It is not possible to admit that all the Neapolitans who, in 1860, were residing abroad should either have been at once deprived of all citizenship or preserved their original one, to form a nationality without government or territory. It must therefore be evident that they became without distinction Italian citizens.

8. The honorable Venezuelan Commissioner thinks the Baroness Margherita Bottini should be considered as without right to claim before this Commission, in that having become French by her marriage she must have remained so, notwithstanding the fact that her husband has for the last sixteen years been a naturalized Italian citizen. The Commissioner for Venezuela has here raised a very nice question,

one that might have considerable value and importance were we called to decide French-Venezuelan claims instead of Italian-Venezuelan. Such a question can not come before this arbitral tribunal.

The French code in nowise provides for such a case; but the undersigned recognizes that French jurisprudence has adopted the maxim that a change of nationality on the part of the husband does not affect the status of the wife.

The Italian Civil Code, however, provides (last paragraph of art. 10) that—

> the wife and minor children of the foreigner who acquires citizenship become citizens, provided they, too, have fixed their residence in the Kingdom,

and by the same article the option of citizenship is granted to the children, but not to the wife.

Now, the Bottinis have for many years resided in Italy, and it is notorious that the Baron Carlo Bottini exercises important functions in Italian railway administration.

There is no real issue between the French and the Italian law on the point under discussion, because so far as regards the former it is in the last analysis a question of interpretation, and the latter has a provision clearly and distinctly conferring citizenship on the wife of the naturalized foreigner. But even if there were a conflict, given the fact of the continued residence of the Bottinis in Italy, the honorable umpire, in conformity with principles by him laid down in other cases and with the general principles of law, should recognize the wife as having Italian citizenship to the exclusion of any other. The fact that this lady has acquired (or reassumed, because the writer holds she was born Italian) Italian citizenship, at a time subsequent to the events upon which this claim is based, does not appear to be a motive for debarring her from the right to prosecute her interests before this Commission against the Republic of Venezuela. It suffices that the claim be Italian at the time it is presented to the Commission, and it would be out of reason to insist upon its never having had another nationality. The Bottinis did not assume Italian citizenship in view of the present Corvaïa claim.

Concluding, the Italian Commissioner deems it opportune to remark to the honorable umpire that, in expressing the opinion that the fundamental exceptions with regard to the nationality of the deceased Corvaïa and of several of his heirs at present exclusively submitted to his judgment should be set aside, he reserves his opinion concerning the admissibility of the specific proofs so far adopted by the claimants as to the eight points on which is based their demand for indemnity in the sum of 16,438,661 bolivars. These proofs will be taken up one at a time at the proper moment and discussed with moderation and according to equity, as well in regard to their intrinsic merit as in the calculation of the interest on the amount claimed, which must be reduced in accordance with prior decisions of the umpire and with precedents established by this Commission in analogous cases.

RALSTON, *Umpire:*

The above-styled reclamation is referred to the umpire upon differences of opinion between the honorable Commissioners for Italy and Venezuela as to certain preliminary questions, among others, that of the citizenship of Fortunato Corvaïa; the honorable Italian Commis-

sioner contending that he was a citizen of Italy within the meaning of the protocol between the two countries, and as such entitled to present the reclamation had an opportunity offered during his lifetime, and the honorable Commissioner for Venezuela denying such citizenship. It will not be necessary to discuss at the present time the remaining questions.

The references contained in the protocols, in so far as this Commission is concerned, to the character of the claims submitted to it are as follows:

Referring to the protocol of February 13, 1903, the preamble speaks of "Italian claims." Article I refers to "claims * * * preferred * * * on behalf of Italian subjects." Article III mentions twice "Italian claims." Article IV speaks of "Italian claims."

The preamble of the protocol of May 7, 1903, refers to "Italian claims against the Government of Venezuela," but gives no other specific characterization.

The only question which will now be considered by the umpire is as to whether the claim submitted was Italian as far as its original owner was concerned, waiving consideration for the moment of the further question, whether a claim before the Commission must be both Italian in origin and Italian at the time of presentation.

Many documents are presented to the umpire bearing upon the life history of Fortunato Corvaïa, and from their examination one learns that he was born at Calascivetta, Sicily, in 1820, being the son of Guiseppe José Corvaïa. At the age of 18 years, being in infirm health, he voyaged to Venezuela, leaving his mother in Paris; his father, who had been expelled from Sicily as a revolutionist, living from time to time in Malta, London, Paris, Brussels, and elsewhere. Corvaïa arrived at Puerto Cabello, intending to go to the gold mines of Guayana, but, being urged to commence business at the point of debarkation, he did so. Some time afterwards he started a printing office on a considerable scale, thereafter translating into Spanish and publishing many of the works of the more noted French authors. In 1846, he married a girl of 14 years, by the name of Teresa Campbell, a child of English parents, who had come to Venezuela at the time of the war of independence. He interested himself in the public and social affairs of Caracas, forming a musical society, which finally constructed the Caracas theater. In January, 1848, he was occupied in the National Congress as a reporter for his politico-literary publications, and it is said had the good fortune to discover a plot against the life of General Monagas. The same year he went to the United States and brought back a complete supply of munitions of war and one or two vessels, fully armed and equipped, arriving at a fortunate time for the Government, which thereafter successfully opposed the then revolution.

Corvaïa's fortune went on increasing, his business relations with the Government in 1850 demonstrating this fact. In 1850 and 1851 he represented the Government as its confidential agent in the United States, and in the latter year again brought to Venezuelan waters two completely armed vessels of war. A little later, pursuant to his initiative, there was established the cemetery of foreigners in Caracas. In 1854, he, with some friends, established a packet boat communication between La Guaira and Puerto Cabello; and between 1855 and 1858 instituted the banking establishment known as the "Compañia de

Accionistas." With friends, he secured the concession for and installed the electric telegraph throughout the Republic.

After seventeen years of absence from Italy he embarked with his family for Naples, where his mother then lived, with the desire, as it is said, of residing at her side. He was, however, in Naples, we are told, subjected to an insufferable system of espionage, the royal police finally stopping a ball given in his family house to celebrate his return, alleging that such reunions became gatherings of conspirators. He then spent some time visiting various cities of Sicily, presenting his wife to his relatives, who desired him to again inhabit his father's house. The petitioner in this case tells us, however, that notwithstanding the insistence of his Italian relatives, it was not possible for him, with his activity of character, to remain tranquilly in the old peninsula, above all, when he knew that his father was prohibited from entering the kingdom of the Two Sicilies, and he therefore installed himself in Paris.

We have already learned that in 1850 and 1851, Corvaïa represented the Government of Venezuela in the United States. It further appears that in 1853, 1854, 1855, and 1856 he was charged by the Government of Venezuela with arranging, in the best manner possible, questions pending between the Governments of England and Venezuela relating to its public debts, loans made since the year 1840, etc.

In the spring of 1856 he was appointed diplomatic agent to Europe, charged particularly with the duty of fostering immigration to Venezuela, and at his suggestion, in the early part of 1857, he was named envoy extraordinary and minister plenipotentiary of Venezuela to various of the courts of Europe, and he continued in this employment certainly as late as the year 1859. In the year last named he presented his letters of recall, but about the same time was charged with the duty of representing Ecuador "*ad honorem*" in Paris as well as other European capitals, some months later receiving a more formal appointment. He appears to have remained in Paris at least the most of the time until about the 1st of July, 1862, when he returned to Venezuela. It is said that in 1864 and 1865 he aided the Government in connection with the making of a loan. Meeting, however, with losses, he opened a house for the sale of letters of exchange. Later he subscribed to a local loan, and on repeated occasions, as we are again informed, he aided the Government by advancements of money. In 1876 and 1877 he went back to Italy to be present at the death of his mother in Naples; his father having died in the year 1860. At that time Corvaïa's mother left to the city of Castrogiovanni an income of 6,000 bolivars annually to aid its poor students. He died in August, 1886, at Maiquetia, Venezuela.

In view of the foregoing history, was Corvaïa so far an Italian citizen that he personally, during his lifetime, could have successfully maintained before an international commission, controlled, as this must be by the protocols mentioned, a claim for advancements made to or damages suffered from the Government of Venezuela?

Corvaïa was a Sicilian by birth, the land of his nativity—the Kingdom of the Two Sicilies—not having been merged into the Italian union until at least October 21, 1860, when the Two Sicilies joined Sardinia, the first Parliament of united Italy assembling in February, 1861. The determination of his nationality must largely, if not altogether, depend upon the code of the Two Sicilies, and invoking one

printed in 1842 and at the disposal of the umpire, he finds that in treating of the deprivation of civil rights by the loss of the conditions of citizenship, it (sec. 1, art. 20), provides:

The condition as a national is lost—
1. By naturalization acquired in a foreign country.
2. By the acceptance, not authorized by the Government, of a public employment conferred by a foreign government.
3. Finally, by establishing himself in a foreign country with the intention of never returning.
Entering into commercial business can never be considered as done without the intention of returning.[a]

As a matter of historical interest, although perhaps not of great importance in the determination of this question, there is added in a footnote the Italian code on the same subject, as it existed down to about three years ago.[b]

It appears from the statement of fact above given that Corvaïa was in Venezuela diplomatic service as early as 1850, when he was sent to the United States; that in 1853, 1854, and 1855 he occupied confidential and intimate relations with the Government in the adjustment of its financial obligations to foreign powers; that while he doubtless went to Italy in 1855, it was with no settled intention of remaining there, as is manifest from the statement that his activities could find no proper outlet in the old peninsula; that in 1856 he reentered the Venezuelan public service as the direct and immediate representative and mouthpiece of the Government, under credentials which in terms accredited him to the French Emperor, who, as we further learn, was to give "entire credit to the words of the envoy, whether spoken or written, as the organ of the Government of Venezuela," and so far did he consider himself and his fortune bound up with Venezuela that we find among his papers the draft of a proposed treaty of commerce between Venezuela and the Two Sicilies, which draft, it seems fair to presume, was prepared by himself as the representative of a nation other than that of his nativity. We note in June, 1862, an exchange of letters between Corvaïa and the Italian ambassador in Paris concerning a loan which he desired Italy to guarantee for Venezuela on the security of Venezuelan custom-houses. It is true that the letters to and from Corvaïa with relation to the latter affair do not recite any representative capacity, but the inference is very strong that at the period named he did represent the Venezuelan Government.

---

[a] La qualità di nazionale si perde:
1. Per la naturalizzazione acquistata in paese straniero.
2. Per l'accettazione non autorizzata dal Governo di pùblici impieghi conferiti da un Governo straniero.
3. Finalmente qualunque stabilimento eretto in paese straniero con animo di non più ritornare.
Gli stabilimenti di commercio non potranno giammai considerarsi come formati senza animo di ritonare.

[b] ART. XI. The right of citizenship shall be lost—
1. By him who renounces it by means of a declaration made before the custodian of a civil register, followed by the change of his residence to a foreign country.
2. By him who may have taken up the citizenship of a foreign country.
3. By him who, without authorization of the Government, may have accepted employment or entered into the military service of a foreign power. The wife and minor children of those who have lost their citizenship shall become foreigners, except in the case of having continued to reside in the Kingdom.
They shall be able, nevertheless, to recover their citizenship in the case and by means of the forms indicated in Article XIV with respect to the wife, and Article VI with respect to the children.

It seems therefore absolutely clear that he lost his Sicilian citizenship long before the union of the Two Sicilies with Sardinia, provided the conduct recited came within the denunciation of the law as constituting acceptance of "public employments" (publici impieghi) conferred by a foreign country.

Upon this point we may refer briefly to the opinions of text writers.

Alauzet in "De la Qualité de Français et de la Naturalization," section 35, indicates that by French law acceptance of any public function, administrative or judicial, involves loss of citizenship. (It is to be borne in mind that the corresponding language of the French code is "Fonctions publiques.")

Folleville, in his work entitled "La Naturalization," sections 449 and 450, takes the position that a Frenchman can not accept diplomatic functions without losing citizenship, but would permit him to accept a position as consul, as such a position is not a "fonction diplomatique" for "ils ne représentent point *le pouvoir exécutif du pays étranger;* * * * ils sont en un mot de simple mandataires dans l'intérêt du commerce."

Folleville, in section 453, says that in the case of a French physician put by a foreign government at the head of a hospital, the controversy is sharp as to whether he is furnished with a public character, receiving government pay.

One of the final criteria, as given by Folleville, section 454, to be used to arrive at a proper conclusion, is stated as follows:

Le juge doit rechercher de quelle nature, politique ou non, est le lien de subordination qui rattache un Français à un gouvernement étranger.

Contuzzi in "Il Codice Civile nel Rapporti Diritto Internazionale," on page 61, note, says:

An Italian who, without the permission of the Government, accepts employment of a foreign government or enters into the military service of a foreign power, loses his Italian citizenship (Civil Code, Art. XI, No. 3), but if contemporaneously he does not acquire the citizenship of a foreign state from the government of which he has accepted the employment, or under which he may have entered into the military service, he finds himself without a country.[a]

It seems, therefore, perfectly clear by the French code, by the Italian code as it existed up to three years ago (a change having been made recently), and by the code of Sicily as it existed up to the time of the unification of Italy, that the man who accepted public employment of a diplomatic character lost his ancient citizenship, unless by some affirmative act he thereafter regained it.

As has further appeared from the Sicilian code, the national who has departed without intent to return (save in a certain case in no respect resembling the present) loses his citizenship.

Meanwhile, it is worthy of note that very eminent authorities have reached substantially the conclusions embodied in the Sicilian Civil

[a] Un italiano, che, senza permissione del Governo, accetta un impiego di un Governo estero od entra al servizio militare di potenza estera, perde la cittadinanza italiana (Cod. Civ., capov. n. 3); ma, si contemporaneamente egli non acquista la cittandinanza dello Stato estero dal cui Governo abbia accettato un impiego, o presso il quale sia entrato a prestare servizio militare, egli trovasi senza patria. La moglie e i figle minori di un italiano che ha perduto la cittadinanza, perdono anch'essi la cittadinanza italiana alla condizione che non continuino a mantenere la loro residenza nel Regno (Cod. Civ., art. 11, capov., n. 3° alinea); ma, se per questa circostanza non acquistano di pieno diritto la cittadinanza novella del rispettivo marito e padre, essi si trovano già senza patria.

Code, above referred to, and this without the aid of statutes. In 1873 the President referred certain questions on the subject of citizenship to the Hon. George H. Williams, Attorney-General, whose reply is found in 14 Opinions Attorneys-General, page 295. To the question, "Can an election of expatriation be shown or presumed by an acquisition of domicile in another country with an avowed purpose not to return?" the Attorney-General responded:

> Residence in a foreign country and an intent not to return are essential elements of expatriation, but to show complete expatriation as the law now stands it is necessary to show something more than these. Attorney-General Black says (9 Opin., 359) that expatriation includes not only emigration out of one's native country, but naturalization in the country adopted as a future residence.
>
> My opinion, however, is that, in addition to domicile and intent to remain, such expressions or acts as amount to a renunciation of United States citizenship and a willingness to submit to or adopt the obligations of the country in which the person resides, such as accepting public employment, engaging in military services, etc., may be treated by this Government as expatriation without actual naturalization. Naturalization is without doubt the highest but not the only evidence of expatriation.

In the answer to another question touching the intent to return, the Attorney-General said:

> When a person avows his purpose to change his residence and acts accordingly, his declarations upon the subject are generally received as satisfactory evidence of his intent, but in the absence of such evidence, the sale of his property and the settling up of his business before emigration or removal of his family, if he has one, arrangements for a continuing place of abode, acquisition of property after removal, the formation of durable business relations, and the lapse of a long period under such circumstances are among the leading considerations from which the intent to make a permanent change of domicile is inferred.

Referring further to the question of abandonment of citizenship by permanent residence abroad, we learn from Moore's Arbitrations (p. 2565) that by the decision of the Spanish-American Commission of 1871 a citizen of the United States who, being of lawful age, leaves the United States and establishes himself in a foreign country without any definite intention to return to the United States is to be considered as having expatriated himself. (For other references similar in character see Van Dyne on Citizenship, pp. 275–278.) The references to American authorities are the stronger since no laws of the United States provide expressly for expatriation.

It will be noted that nearly all of the criteria held to evidence abandonment of original citizenship existed in the Corvaïa case. Save when absent in the United States or Europe on official business for Venezuela, or for a period of two or three years for Ecuador, Corvaïa appears to have passed forty-eight years of his life in Venezuela, and his last twenty-four years seem to have been uninterruptedly spent in Venezuela, except for a very brief stay in Italy occasioned by his mother's death.[a] The umpire, under the testimony before him, is unable to refer this long residence in Venezuela to any sufficient considerations of ill health or poverty, and he can not ignore the fact that, despite the protests of his family, Corvaïa declined the less active life of the Italian peninsula for Venezuela and her service thirty-one years before he died, then passing perhaps only a month or two under the Italian sun.

A further point should not be omitted. We may believe Venezuela knew, as she might well have known, that when Corvaïa entered her

---

[a] The expediente is not very complete as to the relative portions of his later years he spent in Venezuela and abroad. (Note by umpire.)

diplomatic service he abandoned all right to call himself a Sicilian. The Government might properly have hesitated or refused to receive into one of its most important employments a man who would be recognized by his original government as still attached to its interests.

Italy is, therefore, now estopped to claim Corvaïa as her citizen, standing in this respect as did the Two Sicilies, and may not say that her laws are made to be broken and have no binding force when assumed interests dictate their disregard.

Another consideration: The umpire is disposed to believe that the man who accepts, without the express permission of his own government and against the positive inhibitions of her laws, public and confidential employment from another nation is himself estopped from reverting to his prior condition to the prejudice of the country whose interests he has adopted.

The umpire does not ignore the conclusion reached in the Giordana case, which recognized as still an Italian a poor man who had spent but a few years in Venezuela, and who had for a year or so occupied an extremely minor position, not connected with the administration of the laws of Venezuela or being in any way representative. The umpire in that case was disposed to go as far was permitted to him, and perhaps too far, considering the fuller examination of authorities now possible, to sustain the equitable claim of this man, who in a political sense was not more important to the government than a day laborer, virtually following the suggestion of Folleville, section 454, above cited, that—

> Le juge doit rechercher de quelle nature, politique ou non, est le lien de subordination qui rattache un Français à un gouvernement étranger,

and he found no political bond of subordination.

Did Corvaïa ever regain the Sicilian citizenship lost by him by virtue of his public employment in Venezuela? The Sicilian law provided that:

> The national who has lost his status as a citizen can always regain it by entering into the Kingdom, with the approval of the Government, and declaring that he has returned to establish himself there, and by renouncing whatever position may be contrary to the law of the Kingdom.[a]

The Italian code is quite similar in character and provides as follows:

> ART. XIII. The citizen who may have lost his right by any one of the causes set forth in Article XI may recover them:
> 1. By his return to Italy, with the special permission of the Government.
> 2. By renouncing the citizenship or civil or military employment which he may have accepted in a foreign country.
> 3. By the declaration made before the custodian of the civil register to fix his domicile within the Kingdom, provided always that he carry out this intention within the term of one year.[b]

Contuzzi treats these three provisions of the Italian code as cumu-

---

[a] Il nazionale che abbia perduto la qualità di nazionale potra sempre ricuperarla rientrando nel regno coll'approvazione del Governo, e dichiarando di volervisi stabilire e di rinunziare a qualunque distinzione contraria alla legge del regno.

[b] ART. XIII. Il cittadino che ha perduto la cittadinanza per alcuno dei motivi espressi nell' articolo 11, la ricupera purchè:
1. Rientri nei regno con permissione speciale del governo;
2. Rinunzi alla cittadinanza straniera all' impiego od al servizio militare accettati in paese estero;
3. Dichiari davanti l'uffiziale dello stato civile di fissare e fissi realmente entro l'anno il suo domicilio nel regno.

lative, as they plainly are under the Sicilian code, and there is nothing before this Commission to show either:

(*a*) That Corvaïa returned to Italy with the special permission of the Government.

(*b*) That he renounced the foreign citizenship. (He held foreign office, both before and after his visit to Italy in 1858, and his renunciation does not appear to have been of the voluntary character apparently contemplated by the section.)

(*c*) That he declared before the custodian of the civil register that he was about to take up his residence or that he did in reality establish his domicile in the Kingdom within one year.

We have therefore the case of a man who had definitely lost and who never regained his citizenship.

The umpire can not believe, therefore, that Fortunato Corvaïa during his lifetime could have presented this reclamation as an Italian subject.

A second exception presented by the honorable Commissioner for Venezuela relates to the citizenship of some of the heirs of Corvaïa, who are said to be Italians, and it is contended that as the claim is not Italian in origin the Commission does not possess jurisdiction over it, even admitting that some of the heirs are now Italian.

On the other hand, it is earnestly insisted that the language of the protocols, referring as it does to "Italian" claims and claims of "Italian subjects," is sufficiently broad to confer the needed jurisdiction upon the Commission.

If the proposition now presented were one of first impression the umpire would approach its study with a strong disposition to recognize the jurisdiction of the Commission over claims which had by regular course of inheritance now become vested in Italian citizens, for he would recognize that to refuse, to illustrate, jurisdiction in a French commission because a claim, although French in origin, was now owned by Italian citizens, and to refuse jurisdiction over the same claim in the Italian Commission because, although now Italian in ownership, it was French in origin, would be to perpetrate an injustice. The umpire does not, however, find himself free. A long course of arbitral decisions has emphasized the fact that the claim must be both Italian in origin and Italian in ownership before it can be recognized by an Italian Commission.[a] (See Moore's Arbitrations, pp. 1353, 2254, 2753, 2757.)

Knowledge of this condition induced the signers of the American protocol to arrange its language to the end that certain claims, British in origin but now American in ownership, might be presented before the American Commission.[b]

In the discussion of this case it was urged upon the umpire that the presence of the "most-favored-nation" clause contained in article VIII of the protocol should be so construed as to give to Italy all the advantages which might be claimed by American citizens under the American protocol. The umpire discussed so fully in the Sambiaggio case[c] the effect of the favored-nation clause as contained in the protocol, pointing out that it was plainly designed to refer to claims there-

[a] See extensive discussion of this subject in the opinion of Umpire Plumley in the Stevenson case, p. 442.

[b] See opinion of Umpire Barge in the Orinoco Steamship Co. case, p. 83.

[c] See p. 666.

after to originate, that he is unable to accept the suggestion now under consideration.

The exception, therefore, of jurisdiction of this Commission over the claims of those who are now Italian citizens must be sustained, but without prejudice to the rights of any of the claimants to claim against Venezuela before any court or commission which may have suitable jurisdiction, or to take such other action as they may be advised.

DE CARO CASE.

(By the Umpire:)

A paper blockade or blockade by proclamation is illegal, and a country declaring it accepts the legal consequences.

Damages refused for acts of unsuccessful revolutionists (following Sambiaggio case).[a]

Under Venezuelan law duties can not be collected on exportations of Venezuelan products.

Commission can not correct abuse of process in judicial proceedings which have been closed and in which the claimant might have directly applied to the court for relief, but did not.

AGNOLI, *Commissioner* (claim referred to umpire):

Daniele De Caro, an Italian citizen and wealthy merchant of Barcelona, claims:

1. For interruption of his import trade by the ineffective blockade of the port of Guanta decreed by the Venezuelan Government, 47,719.30 bolivars.

2. For interruption of his export trade under identical circumstances, 13,807.03 bolivars.

3. For duties on exportations illegally collected by the authorities of the State of Barcelona, 10,595.47 bolivars.

4. For forced loans exacted of the claimant by Gen. Paolo Guzmán, of the "Libertadora" revolution, and Giuseppe Antonio Velutini, of the Government, 19,766.40 bolivars, plus interest on same, 2,371.96 bolivars.

5. For damages arising from the seizure of 5,000 hides ready for shipment, 12,972 bolivars, including the expenses for obtaining the release of said hides.

6. For interest paid and interest lost on the amounts of 40,000 and 140,000, at 6 per cent for one year, 10,800 bolivars.

The claimant therefore considers himself entitled in all to an indemnity of 118,032.16 bolivars.

Let us examine in detail if and to what extent this claim may be received under its various heads as presented.

As a rule, damages which appear to be the direct consequences of an unlawful measure should be indemnified.

Such was, in the opinion of the writer because contrary to the principles of international law, the blockade of the port of Guanta and of other ports of the Republic decreed by the Venezuelan Government, but not effective—a fact well known and which is established by a document annexed to the claim. (See the certificate of February 10, 1903, of the chief officer of that port and locality.)

---

[a] Page 666.

The illegality and nullity of a blockade decreed but not enforced, even in the case of civil war, is a question that has often been discussed and that has been decided in previous cases in the sense here affirmed. (See Wharton's Digest of Intern. Law, par. 361; Lawrence in a note on Wheaton, Part IV, chap. 3, Moore on Arbitration, pp. 3404–3406; idem., 3790–3793.)

In the particular case of this claimant it might at first seem that there is a contradiction of fact, because while, on the one hand, he declares and proves that the blockade of the port of Guanta was not effective, he, on the other, seeks to recover because he was prevented from receiving or shipping goods during the same period. But it will be seen that the contradiction is only apparent when it is considered that the hindrance was caused by the execution of an order given to the consuls of the Republic at New York and Amsterdam not to permit the certification of bills of lading of goods for said port of Guanta, which, of course, rendered their shipment impossible and interfered with the regular stoppages of steamers formerly calling there, thus bringing business to a standstill.

There remains, however, to be determined whether the amount claimed by De Caro, because of his not having been able to import merchandise during the period from August 10, 1902, to April 12, 1903, 47,719.30 bolivars, may properly be allowed.

The claimaint establishes his account on the following basis: In the first seven months of 1902 he imported goods from abroad on which he paid 87,590.71 bolivars of custom-house, maritime, and territorial duties. This assertion is proved by the list which appears on page 22 of the claim, authenticated by the declaration of the chief customs officer of the port of Guanta, dated April 30, 1903. In order to exclude any doubt that might arise as to the connection between these two documents, the honorable umpire will deign to note that the sum of 19,835.44 bolivars, indicated by the above-mentioned customs officer, is produced by the addition of 15,868.35 bolivars paid by the claimant on August 2, 1902, on goods imported per steamer *Prins Willem I*, and 25 per cent thereof collected as "territorial duty."

The claimant affirms, besides, that the customs duties represent approximately one-half the value of the goods, and that the presumptive gain of the merchant is 12 per cent gross on the amount of value of goods imported.

As to the second of these assertions, it may be considered correct, inasmuch as a gain of 12 per cent gross on imported goods is not excessive. With regard to the first assertion, its accuracy may be determined by comparing the sum of duties collected by the custom-house at Guanta on the goods received by the claimant per steamers *Prins Frederik Hendrik*, *Prins Willem V*, and *Prins Willem III*, on February 18, March 1, and April 16, respectively, from New York and Hamburg, i. e., 16,876.86 bolivars, with the amount of the value of the goods themselves (see doc. "M," pp. 7–8, and doc. "N," both legalized), which is 32,257.04 bolivars.

On this basis the claimant, who paid in the first seven months of 1902 for goods from abroad 87,590.71 bolivars, found himself in possession of foreign products to the amount of triple the value of the sum named, or 262,762.13 bolivars.

The profits would have been, according to the calculation of claimant, 31,532.12 bolivars, or 4,504.66 bolivars per month. He affirms that

the ineffective blockade lasted about eleven months, and the loss in consequence is estimated by him at 49,551.28 bolivars, from which sum must be substracted 1,831.98 bolivars profit on a small quantity of merchandise which it was possible to land in the second half of December at Guanta from the steamers *Prins Willem IV* and *Prins Willem V*, which had been compelled, from August of the same year, to deposit them (the goods) at Curaçao and Trinidad, afterwards availing themselves of the ineffectual condition of the blockade to reship them to their actual destination.

It is to be observed that these goods had been passed upon by the Venezuelan consulate in Amsterdam before the declaration of the blockade. The calculations made by the claimant seem to the writer to be susceptible of modification as to fact, but acceptable as to principle.

If, on the one hand, an indemnity is due the claimant, on the other we can not take into account the period of duration of the blockade of the allied powers, nor of other brief periods, as he has done, during which commercial traffic was impossible, either because of the notice of the raising of the blockade not having been published abroad, or because of lack of sufficient time for the sailing of steamers from Europe or North America, and the port remaining inactive.

Assuming that the duration of the ineffective Venezuelan blockade was five months, which seems correct, and deducting 1,831.98 bolivars of profit on goods received in December, 1902, it results that the indemnity under this head may be reduced to 20,691.33 bolivars.

Let us now take up the question of damages on account of stoppage of exportation.

In so far as the principle is concerned, the case is identical with the preceding, and it would be useless to indulge in a repetition of the arguments.

In order to justify his demand for an indemnity of 13,707.03 bolivars the claimant bases himself on these facts, to wit: That during the first four months of 1902 (see certificate of United States consular agent in Barcelona, of April 3, 1903) he exported goods to the value of 46,023.70 bolivars, and affirms that he realized a profit of 10 per cent, or 4,602.37 bolivars—a monthly profit of 1,150.59 bolivars. Assuming that this estimate is moderate and fair, the Italian Commissioner must observe that the claimant had full liberty to export his goods, and especially hides, in which he dealt largely, up to the day of the declaration of the blockade, that is to say, to about August 10, 1902, and that therefore his profit of 4,602.37 bolivars should be divided into about eight months instead of four, which would reduce the monthly profit to 575.74 bolivars. On this basis the sum to which he would justly be entitled under this head would not exceed 2,878.70 bolivars for the given period of five months of Venezuelan blockade.

Concerning export duties illegally collected by the governmental authorities, who were Messrs. Briceño Martin (p. 42), Pedro José Adrian (pp. 46 and 48), J. Bello Rodriguez (pp. 110 and 111), H. Calcaño (p. 112), and F. Lopez Baguero (p. 113), for the State of Barcelona, these are amply documented and their illegality is unexceptionally demonstrated by the circular of Gen. José Antonio Velutini (p. 50), Venezuelan ex-minister for the interior. The order therein contained was not made effective by the Government of the Republic, which was fully aware of the abuses complained of by the claimant, but took no steps to abate them, and therefore and thereby assumed full responsi-

bility for their existence. Under this head is claimed the sum of 10,001.05 bolivars, which admits of no reduction, and interest thereon 594.42 bolivars. This interest is calculated at 1 per cent per month, but should be stated at one-fourth or 148.60 bolivars, according to the rule governing interest in this Commission.

The forced loans were imposed by Gen. Paolo Guzmán, of the "Libertadora" revolution, in the sum of 18,779.40 bolivars, and by Generals Velutini and Bravo, of the Government, in the sum of 2,000 bolivars; but the receipt of these latter to the amount of 1,013 bolivars was accepted in payment of export duties, the reimbursement of which forms another part of this claim. Therefore setting aside, and with reservation (accepted by the Italian Commissioner), of the right to recover the amount represented by General Guzmán's receipt, and hence of forced loans imposed by the revolutionists, the claimant asks under this head an indemnity of 987 bolivars.

Let us pass now to the seizure of the 5,000 hides.

The claimant was indebted to the custom-house at Guanta for imports received August 2, 1902, in the sum of 19,835.34 bolivars (see certificate of chief customs officer, pp. 21 and 21 bis). According to the custom rules then in force he had seven days in which to pay this amount. Just at that time, however, both Guanta and Barcelona fell into the hands of the revolutionists, who imposed upon claimant the forced loan of the amount above mentioned.

After November 25, 1902, and the recapture of Guanta and Barcelona by the federal troops, the Governmental authorities insisted that claimant pay again the sum indicated for duty on imports, which he refused to do. Thereupon the judge of hacienda ordered as a guarantee of payment the seizure of the 5,000 hides in question and which were in his storehouses in Barcelona. Claimant states their value to have been in Guanta or New York 120,000 bolivars. He subsequently obtained the release of the hides by a "resolution" of the minister of hacienda (p. 105) of December 22, 1902, giving satisfactory guarantee for the payment of the sum claimed, but afterwards compromising with the Government on payment of 9,917.72 bolivars—i. e., half the sum originally claimed.

This transaction took place before the honorable umpire ordered, by his decision in the Guastini case, the refundment of duty collected by the Government after the same had already been collected by the authorities of the revolution. But the claimant does not ask the repayment to him of said duties in view of the intervening transaction (see doc. "O" and particularly the marginal note in red ink), which, however prejudicial to his interests, he will respect. The Italian Commissioner has here given this detailed statement solely to clear up the antecedents of the claim for the seizure of the hides. According to Venezuelan commercial laws actually in force, a judge may not, for the purpose of securing the payment of any given sum, confiscate goods in excess of said sum, plus the requisite judicial costs.

It is customary that the goods seized shall not exceed double the amount sought, the excess to this extent being considered sufficient to cover the costs mentioned.

In this case the judge of hacienda, to insure a payment of 19,835.44 bolivars, ordered the seizure of 5,000 hides, worth, according to estimate of the claimant, more than six times the sum claimed, and therefore three times more than he was allowed by law and custom to seize. The measure was consequently illegal in a double sense, in that the

claimant was required to pay the same duties a second time, and in that the judge had largely exceeded the proper amount of the seizure.

It is true that on December 22, 1902, the hides were released, but on account of the closing of the port of Guanta they could not be exported until after the raising of the blockade, or next April, whereas had the judge kept within the legal limits in his seizure, the claimant might have been able to ship a part of his goods on the steamers *Prins Willem IV* and *Prins Willem V*, which touched at Guanta from the 17th to the 30th of December, 1902.

It will be observed that the notice of the release of the hides on the condition of furnishing a guarantee could not reach Barcelona until a considerable time after the close of the year, on account of the interruption of all telegraphic and postal communications, which explains why the guarantee was not furnished until April 20. (See doc. O.)

Now, it being well known that hides which are not shipped at the proper time lose in weight, and that they are sold by weight, it follows that they lose in value. This loss is by the claimant put at 6,992 bolivars. It is to be noted, also, that on the hides remaining unshipped an increase of duty was laid under the guise of a "war tax," which may be considered a further result of the illegal act of the judge above referred to, as was also the expense incurred in sending one of his employees, one Antonio Vestri, as ascertained by the writer, to Caracas for the purpose of obtaining an order for the release of the hides mentioned. This it required a month to accomplish; but in consequence of the then disturbed condition of the country, three months elapsed before Vestri could safely return to Barcelona. Summing up, the claimant, from these various losses in connection with the seizure of his hides, considers himself entitled to an indemnity of 12,972 bolivars; but the Italian Commissioner, while admitting the equity of the principle involved in the demand for such indemnity, holds that it should be reduced, as shown in the following considerations:

The value of the hides as stated by the claimant seems exaggerated; according to impartial and exact information this should not exceed 100,000 bolivars. The action of the judge of hacienda can not be called into question except in so far as it exceeded law and custom in going beyond the limits of two-fifths of the goods seized. The indemnity claimed under this head should be reduced to three-fifths, or 7,783.50 bolivars.

The last motive for demand of indemnity by the claimant is based on the fact that, not having been able to sell his 5,000 hides at an opportune moment, he was, in the first place, not able to meet certain obligations toward his correspondents (in proof of which see his account current, pp. 96–100), and thereby was charged for sums of accrued interest; and in the second place was prevented from profiting by the sale of the hides valued by him at 120,000 bolivars, and by another sum of 20,000 bolivars for a certain lot of hides which he affirms he was prevented from exporting on account of the blockade.

The Italian Commissioner holds the first of these demands justified, but considers the second deficient in proof. He therefore believes that under this head there should be awarded an indemnity of 2,400 bolivars.

Recapitulating, while having in view the decisions of the honorable umpire, and reserving the right of the claimant to indemnity for inju-

ries inflicted by the revolutionists, the Italian Commissioner is of opinion that the present claim should be allowed in the aggregate amount of 42,490.18 bolivars, with interest thereon from the date of the introduction of the claim to the Commission to the 31st of December of the year last past.

ZULOAGA, *Commissioner:*

This individual claims certain amounts for injuries which he says he suffered, because in accordance with the decree of the Government blockading the port of Guanta, which according to his statement was not effective, he could not carry on exporting and importing. The time referred to is from August 3 to November 25, during which the revolutionists occupied Guanta, and later, from February 16, 1903, to April 12, 1903, when they were also occupying it. The claimant also makes demand for the time of the blockade of the allied powers, but the Italian legation does not support this part of the claim. The time fixed, therefore, is about five months.

The damages asked are the unrealized profits in mercantile operations which he imagined or satisfied himself he could have made, in accordance with calculations based on the former course of his business. From these calculations it will at once be seen that they attempt to compare a period of tranquillity and peace with another completely disturbed, during which a revolutionary government was in force, which in accordance with the statement of the claimant himself was one of violence and arbitrariness of every kind; that from the 5th to the 10th of August, 1902, in the city of Barcelona, a disastrous and fatal struggle took place, by virtue of which almost all the inhabitants were ruined; that under these conditions it is not credible that Caro could have thought of making extensive importations, nor could he have had anything to export; that if Caro suffered because of the suspension of his business during this period of disturbances, on the other hand, the legitimate authorities having been reestablished, the subsequent importations and exportations must have been greater because of this suspension and the one thing compensated the other.

This with respect to the amount of the claim, since with respect to its juridic validity, it is my opinion that the Government of Venezuela had a right to prohibit commerce with these revolutionary ports, especially when the vessels that carried on the commerce also touched at other Venezuelan ports; that the observation to the effect that the Government, not holding actual sovereignty over these places in revolution, it could not oppose commerce with them, is not conclusive as to this claim, since, if it could treat them like the enemy's country, I do not see why the inhabitants of that territory could not have taken direct action against it because of this treatment.

I reject this portion of the claim, not only in fact but also in law.

De Caro claims 8,876 bolivars (p. 38) for duties on exportation paid for hides and pelts, according to a receipt which he presents (pp. 42, 46, 48), which could not be collected, because they were unconstitutional, and he demands, moreover, interest on these sums. It is true that the collections of these duties is unconstitutional, but the law gives a right to the citizens to go before the court and denounce as unconstitutional the decree which levies them, in order that it may not continue in force. Besides, in reality, in the course of the transaction the merchant computes the duty in his calculations and it does

not fall on him, either because the article (the hides in this case) are bought cheaper from the producer, or because they are sold at a higher price. There is, therefore, no direct damage. I reject this claim.

De Caro, moreover, claims 19,766.40 bolivars for loans to the revolution and the Government. They are not recoverable, except those made to the officers of the Government amounting to 987 bolivars, besides interest from the 24th of October, the date of the presentation of the claim.

He claims 12,972 bolivars more for the expenses of an injunction proceeding which the judge of the hacienda brought against him, in a suit which he prosecuted through the government attorney, for failure to pay certain export duties, the claimant maintaining that the attachment was illegal. The affair terminated, as appears, by an agreement between the government attorney and De Caro. It is, therefore, a completed transaction, and it is not for this Commission to review the provisional decisions which the judge may have rendered in the suit. The statement of De Caro that it was not possible to lay an attachment on his hides, the value of which was much more than twice the amount claimed (which does not appear), is not true either. The judge could have issued the attachment, and he, proving the value of the goods attached, could demand that it be limited to double the value of the amount claimed. I reject the claim.

M. De Caro wishes that there be paid him interest on the sums which he owed his creditors. I reject the claim.

RALSTON, *Umpire:*

The above entitled claim was duly referred to the umpire upon difference of opinion between the honorable Commissioners for Italy and Venezuela.

It appears from the expediente in this case that for many years past the claimant, De Caro, a subject of Italy, has resided in Barcelona, Venezuela.

His first demand is for the sum of 47,719.30 bolivars, for injury to his business consequent upon the paper blockade of Guanta (the port of Barcelona), proclaimed in August, 1902, Guanta then being in the possession of revolutionists. The amount of this claim is, by the honorable Commissioner for Italy, for various reasons not necessary to the discussion, reduced to 20,691.33 bolivars. The claim evidentially is only supported by proof of the fact that in October, 1902, the claimant ordered from Neuss, Heslein & Co., of New York, a cargo of kerosene, rice, flour, etc., the value of which is not stated, but which the firm in question refused to forward, assigning as the reason that the consul-general of Venezuela at New York would not authenticate invoices for Guanta; the firm, however, promising that as soon as affairs should take a favorable turn and the port be opened, it would forward cargoes. In exchange for the goods above referred to, the claimant proposed to ship 6,000 hides and 150 packages of skins.

Some proof is offered for the purpose of showing the amount paid in the shape of duties upon importations made by De Caro during the seven preceding months, as well as the value of such importations, and the probable profit thereon is calculated at the rate of 12 per cent; the Commission being asked to accept the theory that but for the blockade, De Caro's importations would have been, during the months

it lasted, of the same average amount, with the profits calculated as indicated.

A further branch of the claim, which is for the interruption of the claimant's export trade because of the paper blockade, and for which he asks 13,807.03 bolivars (this amount being reached by a similar course of reasoning), may be considered in this connection.

That a noneffective or paper blockade is illegal, and can not constitute the foundation of rights on the part of the government declaring it, but may create liabilities against such government, is well established; many of the authorities demonstrating this position being collected in the opinion of Plumley, umpire of the British-Venezuelan Mixed Claims Commission in the case of Compagnie Générale des Asphaltes de France.[a]

Illustrations of this doctrine in principle, suggestive of the one now under consideration, will be found in the cases of the *Boyne* and the *Monmouth*, cited in Moore's Arbitrations, page 3923, and it remains only for the umpire to apply it.

The umpire can not accept the idea that the claimant is entitled to average business profits for the months of the blockade, reckoned upon possible importations and exportations and based upon the imports and exports for any preceding period, as he would be compelled to ignore the fact that during a large part of the time of the noneffective blockade there was continuous fighting in and about Guanta and Barcelona. Historically, he notes that on the night of August 9, 1902, Barcelona was taken from the Government by troops of the revolution and new civil authorities named by them; that on November 26, 1902, Barcelona was reoccupied by the Government; that on February 17, 1903, the governmental forces retired, and on February 19, 1903, the revolutionists took possession of the town, retaining such possession until after a bloody conflict, lasting from April 5 to 10, they were ejected. The above account takes no note of frequent skirmishes. To assume business profits for such a period at all analogous to those obtained during the time of business quiet would be to grossly violate the probabilities of the situation. It is not to be supposed that during a period of destitution, plundering, and destruction of all sorts De Caro would have successfully carried on any business whatsoever.

The umpire, therefore, finds it impossible to accord to the claimant any profits, even upon the goods he ordered from Neuss, Heslein & Co., and these are the only goods that the proof shows were ordered at all by De Caro from abroad during the time in question. He would find difficulty in awarding, even under favorable circumstances, speculative profits upon goods which had never been forwarded to or received by the claimant.

The situation as to the 6,000 hides and 150 packages of pelts proposed by De Caro to be exchanged for the goods in question, is somewhat different. He was entitled to sell or exchange these goods without interference and he had the opportunity of doing so. This opportunity was lost and he was not able to sell or exchange them until many months after. He is entitled to the difference, as nearly as it can be estimated, between the value of the goods in October, 1902, and their value at the time of the final sale, plus charges for taking care of them in the meanwhile. The amount of this difference and of these

[a] See p. 332, and p. 842 and note.

charges is not clearly proved in the testimony submitted, but by reference to the testimony connected with a later item of De Caro's claim it may be approximately ascertained. By calculation we find that the probable loss in value of the hides were 8,390.40 bolivars, and there was paid out by him on account of interest, which we may regard as a carrying charge, 2,400 bolivars, making a total of 10,790.40 bolivars.

Another head of plaintiff's claim relates to certain forced loans executed by the revolutionary and governmental generals. For reasons sufficiently discussed in the Sambiaggio[a] and other cases, the Government can not be held responsible for loans exacted by revolutionists, but is responsible for loans required by General Velutini, and this exaction, deducting for "vales" duly received and accepted by the Government, amounted to the net sum of 987 bolivars, for which an award must be made.

A further head of the claim is for taxes on exportations. This tax was exacted in direct violation of the provisions of the constitution of Venezuela, which in the second title "Bases de la Unión," article 6, reads as folllows:

ART. 6°. Los Estados que forman la Unión Venezolana son autónomos é iguales en entidad política, y se obligan: * * *

ART. 11°. A no imponer contribuciones sobre los productos nacionales destinados á la exportación.

A full allowance must therefore be made for taxes so collected, and these amount to 8,876.17 bolivars.

An additional claim arises from the seizure of 5,000 hides (apparently the larger part of the hides whose exportation was prevented as above described), and the circumstances with relation thereto may be detailed as follows:

Claimant was indebted on August 2, 1902, to the custom-house at Guanta in the sum of 19,835.34 bolivars, and had seven days within which to pay this amount. By the 10th of the month Guanta and Barcelona both fell into the hands of the revolutionists, and the claimant was required to pay this sum to them. After the capture of Guanta and Barcelona by the Government, its authorities insisted that the claimant should again pay the sum indicated for duty on imports, which he refused to do. The judge of hacienda thereupon directed the seizure of 5,000 hides as a guarantee of its payment. These hides were said to have been of the value of 120,000 bolivars. Subsequently, upon his giving satisfactory security, the hides were released and at a later time the Government compromised with the claimant, he paying 9,917.72 bolivars, being one-half the sum originally claimed. It is now contended on behalf of the claimant that even if the action of the Government had been entirely legal, the judge should not have directed the seizure of property in excess of twice the amount of the Government's claim, and that, having directed the seizure of property, worth five or six times the amount of the claim, the Government should be held responsible for any loss attendant upon the embargo of the excess amount, and it is also contended by the claimant that he was compelled, because of the seizure of the property, to borrow money at a high rate of interest, which borrowing would not have been necessary had the judge of hacienda acted within the usual limits of his authority. Furthermore, it is said that the hides, because of

[a] See p. 666.

the delay, became less valuable, and the Government should be charged with the difference in value consequent upon the delay.

The umpire has already sufficiently indicated in the Guastini case[a] his strong conviction that when taxes had been once collected by a de facto government, the government de jure could not enforce a second payment, and but for the compromise between the Government and De Caro, which compromise antedated his decision in the case referred to, he would have no difficulty in awarding to the claimant any sum he might have paid on this behalf, but, as is admitted by the honorable Commissioner for Italy, it is now impossible for him to reopen this matter. He feels compelled to regard the compromise as a complete and final settlement of any issue growing out of the acts to which the compromise related, whether such issue had reference to the original dispute or the proceedings taken to enforce the original claim. He can not recognize that De Caro accepted the benefit of the compromise of the original claim and at the same time reserved a right of action for steps taken to enforce it.

While the terms of the compromise entered into between De Caro and the Government do not appear at length in the record, we may believe that both parties considered that the dispute, with all the attendant consequences, was at an end when 50 per cent of the original claim was paid by De Caro.

The claim for moneys necessarily borrowed has apparently been allowed under another head, and as the hides were only detained from December 1 to December 22, 1902, it would under this heading call for little attention. Besides, if De Caro believed that the judge of hacienda had directed the seizure of an excessive amount of property, he had the right under the code of civil procedure of Venezuela to appeal to the court for the release of the excess, in this respect enjoying the remedy to which he would be entitled under similar circumstances in a common-law country. It does not appear that he availed himself of his rights, and it is not within the power of this umpire to grant damages to a claimant who, by a seasonable reliance upon his rights in a case in court, might have suitably protected himself. Certainly before he can appeal to an international tribunal, the suit in court having long since terminated, he should be prepared to show some actual denial of justice with relation to the subject-matter of his appeal.

A sentence will therefore be ordered in favor of De Caro in the sum of 21,788.62 bolivars, with two months' interest to December 31, 1903, at the rate of 3 per cent per annum.

MARTINI CASE.

(By the Umpire):

The right of the sovereign power to submit all claims of its citizens to a mixed commission is superior to any attempt on the part of a subject or citizen to contract away such right in advance.

This Commission is, as between Venezuela and Italy, substituted for all national forums which, with or without contract, might have had jurisdiction over the subject-matter.[b]

---

[a] Page 730.

[b] See note attached to this opinion on p. 841.

Venezuela is responsible for attempts to enlist in her armies, in violation of her contract, Venezuelans employed by the claimant, and also for interference with foreign workmen employed by the claimant.

Venezuela is responsible for profits which claimant might have obtained had she not broken her contract where such profits are not uncertain or remote, or where it may reasonably be presumed they were within the intent and understanding of the parties when it was entered into.

Where the damage is continuous in its nature, an award may be made covering the loss up to the date of such award, although, under other circumstances, it seems damages after August 9, 1903, the last date for the presentation of claims, would not be recoverable.

A contract is to be interpreted in the light of the surrounding circumstances, and the port of Guanta being open to foreign commerce at the time the contract was signed, and such condition being a material element in the value of the contract, the government is responsible for damage incident to its subsequent closure by executive order.

AGNOLI, *Commissioner* (claim referred to umpire):

In the memorial presented by the firm, at page 68, are enumerated the various items that the claim is composed of, and it is here proper to explain and sum them up.

(a) Thefts. Detailed at pages 72 and 73, and they amount to 9,104 bolivars. The proofs are to be found at fascicle B.

The firm call attention to the fact that it has not been possible to furnish proofs for some of these, because at the time of the taking the station master at Guanta, Marsilio Catelli had gone to Italy (December, 1902), but the more important amount of 8,334 bolivars is supported by the testimony of witnesses. It is to be noted at the outset that the firm relinquish their right to the sum of 750 bolivars because of the possibility that this sum may have formed a portion of the indemnity awarded to A. Bonnon by the French Commission, which granted his claim in the sum of 6,000 bolivars for damages caused for the most part by revolutionists.

(b) Requisitions. At page 72 of the memorial is indicated the total amount requisitioned in different ways by General Marcano, of the Government, to the sum of 60,600, and the corresponding documents are in fascicle C. The firm, however, renounce all right to the repayment of this money, as they have explicitly declared to the writer, since the same is included in the account between the Venezuelan Government and the firm in compensation of the annual payment due the former by the latter. On this point it will be well to forestall a possible objection. From original documents shown by the honorable Commissioner for Venezuela, copies of some of which had already been presented by the firm (see fascicle N), it appears that Engineer Lanzoni, in the name of the firm, declared, under date of September 6, 1900, that in view of certain concessions obtained from the President of the Republic the firm renounced whatsoever claim they might have at that time against the Government. But on examining the previous correspondence, and especially the firm's letter of May 23, 1900, the original of which might be produced by the Government, it appears that among said claims therein enumerated in detail Lanzoni had not included the recovery of the requisitions of Marcano, which at that time did not possess the character of a claim, and the interested parties could not therefore regard it as such, since it was their intention to include it in the account with the Government, as was, in fact, done.

Such inclusion was foreseen, agreed to, and, so to speak, authorized by Marcano himself, as may be seen by the sentence in his own hand, contained in the receipts dated September 30 and October 15, 1899, which states that

dicha suma será pagada con las pensiones que deben satifacer dichos señores al Gobierno Nacional por arrendamiento de la Empresa ya mencionada.

It is clear, therefore, that not only had the firm no interest in making this credit the subject of a claim, but that they were exercising an already recognized right when they inscribed it in the account current as a part of the rent for the mines.

On the other hand it could not be explained why Lanzoni, Martini & Co. were induced to abandon a credit of 60,600 bolivars for a compensation of 52,000 bolivars, which sum represented the reduction to one-half of the yearly rent, while this advantage, which the Government was according, finds a sufficient *raison d'être* in the renunciation of the other items mentioned in said letter.

From all this it appears that the credit on account of requisitions or loans enforced by Marcano, although anterior to September 6, 1900, was not an object of the transaction, and it is therefore equitable that it should figure as a partial discharge of the annual obligation owed by the firm to the Venezuelan Government.

It is moreover just that the sum of these credits be taken into account, since they are all supported by documents in the most unexceptionable manner, and caused, in part, by forced loans exacted for the support of the army, in part by requisitions for animals, and in part for repairs of arms of the troops; that is, for various and distinct items.

A somewhat ambiguous phrase in the Martini memorial—the one which terminates page 71 and begins page 72—may have induced the honorable Commissioner for Venezuela to doubt that the "vales" had been given as an equivalent of the amount of the invoices ("fatture") signed by Marcano. This doubt, however, will appear wholly unwarranted when it is considered, first, that the word "vale" was also used by the firm (see p. 72, line 5) to indicate "fatture" or invoices; and second, that the "vales" are of a date prior to that of the "fatture" themselves. Thus is explained the ambiguity of the phrase mentioned, and therefore of the one which reads, "to render his extortions legal, Marcano left receipt with us," and thus is excluded absolutely the idea that "vales" and "fatture" should mean one and the same thing.

(c) Destruction of 5,697 tons of coal stored at Guanta. The details of this fact are found at page 74 et seq. of the memorial, and the corresponding loss is fixed at 256,365 bolivars.

Before entering upon a consideration of this item the Italian Commissioner is in duty bound to call the attention of the honorable umpire to the fact that the Martini Company have acknowledged in effect (as has been stated by Gen. Pablo Guzmán) that 150 tons were excluded from this destruction and were used for and in the service of the railway. The value thereof, 6,750 bolivars, being necessarily subtracted from the previous amount, the firm have reduced this item to 249,615 bolivars. This destruction was ordered by the revolutionary general, and therefore, according to the rules laid down by the honorable umpire, would not in principle be susceptible to indemnity. But it must be observed that had it not been for the ineffective blockade of the port of Guanta the coal which was afterward destroyed might well have

been sold, because at that time the strike in the United States had considerably increased both the price and demand (a fact which explains why the firm had fixed the price at 45 bolivars, per ton), as will appear from two orders, which are found in fascicle F, and which it was impossible to fill, without adding that, given the agreement made between the firm and Del Buono, the coal could have been consigned to the latter and realized upon at an opportune moment, if the blockade had not prevented.

It must hence be admitted that if the Venezuelan Government had not resorted to this unlawful and, so far as the general interests of business in that section were concerned, injurious measure, and one particularly harsh with regard to the firm, which by reason of their contracts had special rights, the said firm would not have suffered the injury of which they now justly complain.

With regard to this destruction, the Venezuelan Government has submitted written evidence from which it appears that it took place in the presence and with the consent of Engineer Antonio Martini; that the order therefor was issued by Dr. Manuel Rodriguez Armas, formerly the attorney for the firm, and that in order to hasten and facilitate the destruction there were employed tins of petroleum brought there for the purpose by the same train which brought the revolutionary troops thither from Barcelona, as also it is said of Martini, who, it is further alleged, superintended the partial tearing up of the wharf to expedite the dumping of the coal into the sea.

From the evidence adduced it would seem as though the Government were endeavoring to create the impression that the destruction of the coal was the result of a tenebrous and dishonest collusion between General Guzmán and the firm, with the object on the part of the latter of either establishing the basis of a claim for an exaggerated loss, or of disposing at a high price of a quantity of coal of little value, and of culm not otherwise merchantable.

Assuming that the coal was equal to that extracted from the mines—that is to say, good—and that the culm which the firm had accumulated in Guanta for the supply of its compressing plant (which reduces the culm to blocks) was not burned, since it could not have been used by the Government vessels, but remained there awaiting more favorable conditions, and was therefore not included in the account of 5,697 tons really destroyed, an examination of the correspondence had between General Guzmán, then governor of Barcelona, and the firm proves beyond question that the latter not only was not in connivance with the enemy, but sought by all the means at hand to avoid a fact which could not but have most seriously prejudiced it, and which amounted to a disaster, given the very difficult situation to which it had already been reduced.

On being questioned by the writer as to the reasons for his (Martini) being present at the destruction, and as to the accuracy of the evidence submitted by the Government, the claimant furnished such explanations as to establish beyond doubt the inacceptability and the puerilty of the counterproof. The Italian Commissioner sums up these explanations in his own words:

The firm has charge, according to its contract, of all the movable and immovable property of the concession, which it is bound to preserve, and which it must render an account of and restore in good condition at the expiration of its term. Having received the order

for the destruction of the coal, and exhausted to no purpose all efforts to have same countermanded, the claimant thought very properly that his presence might be useful to the interests of the firm and of the Government as well, since while directing the operations the destruction of the wharf upon which a part of the coal had been deposited might be avoided, as well as of the station, the custom-house, the warehouses and the compressing plant, about which was piled the larger part of the coal, and this sufficiently accounts for his presence there. In order to obviate the complete destruction of the wharf he caused openings to be made in the flooring thereof that the coal might the more readily be thrown therefrom into the water, and in order that this might be done in the least injurious manner he furnished the troops with the necessary tools from the company's own stock—a circumstance which he fully explains, while the evidence furnished by the Government makes no mention of it. In order to secure from the troops a certain amount of good will and obedience he offered them rum, and this detail is likewise passed over in silence. The claimant admits that, generally speaking, the narration of events in that document is correct, but calls attention to the fact that they have been set forth in a somewhat disingenuous and biased manner. Judging from the attempt to impute a false and absurd meaning to the presence of Martini at the destruction mentioned, it may be noted that while it is true that De Armas had been the attorney for the firm he certainly was not aiding them at this time, when, as secretary-general of the State of Barcelona, and therefore of the existing Government, he was transmitting the order for the destruction of the coal. This would seem to fully account for *his* presence at the place and time of this unfortunate occurrence.

It is not true that Martini arrived at Guanta with the troops and on the same train, because on being informed of the order by telephone he took a trolley in all haste from Barcelona and arrived fully a hour after the troops had reached the scene of operations. He does not, however, attach any importance to the assertion that he came on the same train with the troops; it might have been better had he been able to do so, for then some of the damage might have been prevented.

The reasons for his presence in Guanta are so obvious that had he remained in Barcelona he might properly be charged with having been negligent. With regard to the coal oil, the evidence seems to imply that it was furnished by the firm, because it came on the train with the troops, and as alleged, with the claimant. This is not true. The oil was not supplied by Martini & Co. But suppose it had been; what then? Since the order had been issued and could not be rescinded the sooner the destruction was accomplished, and the less dangerous the points at which the fire was applied, the better for the surrounding buildings. But what he does explicitly deny is that his presence should have been due to wrong motives, or that he was so inexperienced as to burn his property in the hope of subsequently obtaining an indemnity therefor, which, had it not been for the blockade of the powers, there was not the slightest chance of his getting, and which, based as it is in part on the question of revolutionary damages, may possibly not be agreed to in this Commission, notwithstanding the blockade and the provisions of the Washington protocol.

(d) Damages to shops and materials. The particulars in regard to this item are found at pages 79 et seq., and the amount of indemnity

claimed therefor is 1,500 bolivars. The corresponding documents are in fascicle B, and are substantiated by the evidence of witnesses. In consideration of the small sum involved it is not deemed necessary to enter into a more detailed exposition.

(e) For violence and offenses to persons, amply set forth at pages 84 et seq. of the memorial and established by testimony and various documents, an indemnity of 500,000 bolivars is claimed.

It seems to the writer more appropriate that any indemnity allowed under this head be included in the sum total awarded by the honorable umpire to the firm. The firm of Martini & Co. claim, as reparation for the violence and offenses above referred to and as an indemnity for damages occasioned by the nonobservance by the Venezuelan Government of the agreements made with the firm—collected under three heads, according to the principles sanctioned by the Italian law in matters of renting (see arts. 1575 and 1579 of the civil code) and analogous to those admitted by the Venezuelan civil code, which are:

I. Change in the thing rented and failure to preserve same to the use for which it was intended.

II. Nonobservance of the special obligations of the contract.

III. Nonobservance of the guaranty of the pacific enjoyment of the thing located—

an indemnity amounting in all to 8,737,396.34 bolivars, which is believed to correspond to the sum of resulting damages, comprising those occasioned by the suit of Del Buono and the loss of future profits; that is, of those which the concessions of the mines and their operation would have enabled the firm to realize if their activity had been allowed free and peaceful development.

Before discussing this question of demand for indemnity it would be well to point out the value of two documents submitted by the Venezuelan Government to the examination of this Commission, to wit, the report of the consul of the Republic at Genoa, of August 13, 1903, and the partial account rendered by the custom-house authorities at Guanta of the coal exported by the firm during a period of ten months.

From the first of these two documents we learn that the functionary by whom it was compiled acknowledges that Mr. Pilade Del Buono, the moneyed partner of the firm, "an intelligent, active man with great ideas," has invested "large sums in the exploitation of the mines," and that this affair may be the "source of riches, not only for the contractors, but for the country as well," and that the firm, "by reason of the war, were compelled to suspend their operations and discharge their workmen."

This is precisely what Martini & Co. affirm, and these data enumerated by the consul figure among those on which the claim is based, at least in part. But the conclusions drawn by him from these premises are certainly illogical. He says that it is *evident* that Del Buono has not sufficient capital, even with the aid of his partner, Tonietti, to "undertake such an enterprise as that of the mines, of the railway, and of the port of Guanta."

Whence does he draw this information? If Del Buono, an adept in mining matters, since he had advantageously superintended those of the island of Elba, is an intelligent man, how could he, without giving evidence of a lack of perspicacity, have dared to undertake an enterprise too great for him?

If he invested a large capital in Guanta, and if to procure other large sums (these are the words of the consular report succinctly) he mortgaged his property, and if he has a partner whose financial resources are unknown to us and presumably to this confidential agent of the Government of the Republic, how can the consul allege the foregoing?

It would appear that the consul's reasoning is not altogether consistent, and we may properly infer instead that Del Buono ceased to advance funds when he became aware that on account of the obstacles confronting him, it would have been sheer folly to continue doing so. This is probably why he no longer had recourse to that credit which, given his competency, his energy, and his economic position, would certainly not have been denied him.

The consul has long sought, and perhaps may still be seeking, the firm's headquarters in Italy. Consulting la Gazetta Ufficiale del Regno, No. 167 of 1901, he would have found it, and Del Buono, in bringing his suit against the firm, knew very well where to send the summons. Did the consul suppose that the firm, paralyzed in their operations for nearly two years, were maintaining at Rome and at Partoperraio an office with numerous employees awaiting the resumption of the work in the mines, suspended for reasons already stated? He accuses the firm of an intention to speculate on the Government of Venezuela. If he refers to the future, it is an hypothesis or worse which is not worth discussing. If he refers to the past, it suffices to observe that the firm have so far lost time, money, and labor. "Speculation," in so far as regards the firm, may be excluded from consideration.

Lastly, the oft-quoted functionary formulates this query: "On what do these gentlemen base their claim? On the *reimbursement* of that which they *hoped* to realize, but so far have not realized?"

Exactly; when a contracting party, failing, as in this case, to fulfill the stipulated agreements, arrests or neutralizes the activities of an enterprise to its serious prejudice, the other injured party has a right to demand, not merely an indemnity for the damage actually suffered, and the reimbursement of lost capital, but also the payment of profits which it might justly have realized on the basis of the contract itself.

If the consul had consulted either the Italian or the Venezuelan civil code, he would have seen formulated the principles invoked by the firm and admitted by all tribunals.

Without going further, it must be evident that the report of the consul is only a tissue of puerilities and contradictions.

We come now to the other document, the object of which would be to demonstrate that the firm had produced very little coal, since, dividing the total tonnage of 1,765 into the time during which this amount was exported, the work of extraction appears utterly insignificant. But the document expressly refers to coal *exported*, not to coal *mined*, which changes the conditions of the question.

Let us begin by noting that the firm, precisely on account of the disastrous state of the mines at the time of consignment, were compelled (as appears in the memorial of the firm) to spend much time in the reorganization of the shops, etc., foregoing the work of extraction, and that said firm had made no contracts for the delivery of coal until about the last of their dealings with Del Buono, and just at a time when operations were suspended on account of disorders.

What is complained of by the firm is that they were hindered in the manner set forth in the claim from exploiting the mines, as it was to their main interest to do. It is alleged that in the brief period of peace and activity the firm spent more time in the preparation of the mines and the uncovering of new veins than in extracting coal for commercial purposes. This latter had not more than begun when all operations were paralyzed. So much for a general statement. Let us now come to details and figures.

The firm, by an account current, have reported a total extraction of 14,771 tons, on which a royalty of 7,385.50 bolivars was paid to the Government.

We see how all this agrees perfectly and with all the statements of the firm, as well as with that of the Government.

	Tons.		Tons.
Total production from the beginning of operations to July 12, 1902, date of suspension of operations, a period of two years and nine months	14,771	Exported, as per custom-house report, Guanta, to September, 10, 1902	1,765
		Sold and consumed by workshops and Barcelona-Guanta railway from September, 1901, to July, 1902	2,735
		Destroyed by the revolutionists in Guanta	5,547
		Total	10,047
		Difference	4,724
Total	14,771	Total	14,771

Of these 4,724 tons there are, as culm, partly at Guanta and partly at Naricual, 3,562 tons, more or less, because, after exposure to the elements for two years, a part must have been destroyed by wind and rain, there remains to be accounted for 1,162 tons, as follows:

1. The amount used by the railway and shops since the suspension of operations, i. e., from July, 1902, to the present time.

2. The total consumption of the mining machines during two years and nine months' work, as follows: One boiler for the ventilating apparatus, one hoisting engine, a pump for supplying the village of Naricual, and the 120-horsepower boilers used in the compressing plant.

All this is shown by the few documents saved from destruction by troops and included in the papers of the claim, and the depositions of witness (see question No. 6). The firm would agree to submit these statements to any expert in such matters who would visit the spot in order to establish their truth.

The true value of the two documents submitted by the Government being thus determined, let us sum up the reasons in general upon which is based the firm's demand for an indemnity, in order that we may ascertain if and to what extent such demand may be received.

Lanzoni, Martini & Co. at first, and subsequently Martini & Co., invested considerable capital in the mines, as well as their personal energy for nearly five years and their credit—a fundamental element in all enterprises, whether industrial or commercial. The contrary proofs brought before the Commission are not based on severe and dispassionate criticism. The "justificativo" drawn up at the instance of Vittorio Cotta, a presumably not very impartial individual, as he

had been employed by the firm but was discharged in 1891, can not only have no value as a counterproof, but should be totally rejected on account of its having been made in the absence of one of the interested parties. But in any case what does it seek to prove? That the firm had some accounts unsettled, and that the members thereof have individual debts—as for instance, one of them owes a bread bill; that the firm sold some cement and a few utensils—for the purpose of morally discrediting the management.

As regards the sales, it is to be observed, as has already been stated, that if these took place, even in the small amounts mentioned in the document referred to, they were in the nature of a necessity created by the disastrous conditions confronting the firm. As regards the debts, either of the firm or the members thereof, they are not only specifically denied, but constitute in this circumstance an additional support for their claim, and it is well to note that the unsettled accounts to which the document refers are of the period in which every commercial and industrial activity of the firm was paralyzed. Martini & Co. admit having other debts than those mentioned by their ex-employee; were their condition flourishing they would not be counted among the Italian claimants.

A greater importance has, at first sight, the fact that the bill of John Davis was not paid in 1901, as well as the invoice of John Davis & Son; but this is but an isolated instance which it would seem more equitable to attribute to an irregularity arising out of a change in the administration of the company occurring shortly after that time and within the same year, rather than to a lack of funds ever since, or, worse still, to a lack of good faith—things clearly contradicted by numerous circumstances established from the documents of the claim.

Is it possible that a firm which paid in cash, or otherwise compensated for its annual royalty of more than 100,000 bolivars to the local government by equivalent services which it could not have furnished without undergoing heavy expenses; that settled its account with Marcano, amounting to 60,600 bolivars; that promptly met its checks on the house of De Caro, of Barcelona, for more than 400,000 bolivars; that purchased a steamer at a cost of 567,000 bolivars, including the necessary repairs, etc.; that had through the Bank of Venezuela (as it could readily prove were it not that that institution had again and again delayed the rendition of the account) deposited and subsequently employed in the works several hundred thousand bolivars; that had engaged in Europe and transported to Venezuela numerous detachments of workmen; that according to the agreement of March 22, 1902, was indebted to its partner, Del Buono, over 2,000,000 bolivars, evidently employed in the mines, and that by a document found in fascicle O is shown to have expended more than that in the works themselves—that such a firm, we repeat, could have gravely and intentionally jeopardized their credit for the petty sum of £155 sterling? Is it not much more consistent to suppose it to have been due to an oversight as above suggested?

This supposition seems natural enough, even when it is considered that though the firm have a heavy indebtedness of recent contraction, which is the result of the financial disaster into which they have been thrown, they have no known debts whose origin antedates the beginning of their claim to this Commission. It may be observed, inci-

dentally, that the Lanzoni management did not settle with the other partners, in favor of which he withdrew in 1901.

It may be urged that the agreement between Del Buono and the firm, in virtue of which the loan of 2,000,000 bolivars was negotiated was not recorded, and that this fact diminished its value from the point of view of the proofs which have been sought to be deduced therefrom. This objection can not well be raised by the Venezuelan Government, which not only had knowledge of said agreement but agreed to the clauses therein regarding the delivery of coal. In fact, while up to April 12, 1902, the date when the agreement was made known to the Government, the receipts from coal supplies were credited to the firm, those of subsequent deliveries were credited to Del Buono.

The importance of this agreement is besides shown by the citation before the civil tribunal of Rome (see fascicle I), by which Del Buono summoned the firm in order to obtain a judgment against them for the sums borrowed of him and a settlement of damages. The citation was regularly served upon the firm's office in Rome through Sig. Giuseppe Tarabella, upon the special agent for the representative of the firm, the Hon. Francesco Fazi, whose domicile is near that of his attorney, Felice Gualdi, at the Circo Agonale, No. 14.

It is here opportune to note that the amounts stated by Del Buono in his citation are not those employed by him in the working of the mines, but those which he advanced the firm as silent partner and banker. This observation should be given due weight, in order that the data resulting from the citation itself may not be stigmatized as contradictory with regard to those arising out of the agreement between Del Buono and the firm concerning the supply of coal (fascicle L).

In the citation it is explicitly stated that for the *acceptances alone*, Del Buono's credit amounted to nearly 800,000 bolivars.

Before proceeding farther with the examination of the claim, it would be well to state that on August 31 of the past year, as appears by documents in fascicle O, the balance between royalties due the Government by the firm and the sums paid in cash or by coal, services, and otherwise, showed a credit in favor of the firm amounting to 15,185.64 bolivars. From that date to the present time there have been no more settlements, either because the claim was already submitted, or because, with the exception of a partial operation of the railway, the firm had been reduced to entire inactivity.

This form of settlement between the firm and the Government was the result of a tacit understanding by which convenience and economy was secured to both parties, since it obviated the forwarding of funds often prevented by the conditions of the country, without taking into account that any other form of settlement would have been difficult, because of the refusal to examine the books during the war, as established by documents in fascicle M. It would, therefore, be contrary to equity to object against the firm that the amount of the royalty had not actually been paid to the Venezuelan Government, and raise an objection before this tribunal which said Government had not previously deemed possible.

It will be said, perhaps, that the firm took credit for services rendered the revolution, but when it is considered that the revolution was the government de facto, it would seem that the same rules that were adopted in the Commission in regard to the double payment of duties

(see the Guastini claim[a]) should apply here, and that the firm have kept within due limits of right in including those amounts likewise, in every way acting therein in good faith. Besides, the amount charged for services to the revolution being 32,286 bolivars, and its credit on August 31, 1903, being 15,185 bolivars, the difference would at most be only 17,091 bolivars—a relatively negligible quantity.

Let us pass now to the consideration of other fundamental reasons, as a whole and interlinked, which operate in favor of Martini & Co. Such an examination would demonstrate that the action of the contracting government was the principal, if not the sole cause, of the ruin of the company, and how from this fact arises the right of the firm to an indemnity.

From the evidence of witnesses presented by Martini & Co., it seems clear that the revolution, as well as the Government, but mainly the latter (see especially the deposition of the witness Riva Verni and documents contained in fascicle B), by manifest infractions of contractual agreements, recruited at various times the native workmen of the company, and principally those assigned to the railway service, which could not well suffer interruptions and obstacles of any sort. General Marcano, president of the State, insisted upon having the complete list of the workmen, declaring publicly that he considered them as being wholly at his disposal. (See fascicle B.) It may here be objected that these recruitings in various instances did not go beyond mere attempts and threats; but the effects of these acts were otherwise injurious to the firm in that the workmen, not being able to foresee to just what extent these acts might proceed, fled and hid themselves to avoid any possible danger. Now, when we reflect that the work of the mines and of the railway must proceed in unison, and that their regular function depended entirely upon the harmonious collaboration of the two services, it must be admitted that the failure of one necessarily entailed the failure of the other, so that, for example, whenever the laboring element was lacking the technical or mechanical department of the enterprise remained in whole or in part useless. It is hence clear that a general disorder followed, involving grave damages to the firm, which was still compelled to pay and subsist the foreign element thus forcibly condemned to inactivity in the factories.

To this state of affairs and to other causes fully set forth in the Martini memorial, must be attributed the abandonment of the railway, shops, and factories in satisfaction of which the firm claim equitable indemnity, and which might erroneously be charged to the nonobservance on the part of the firm of its contractual obligations toward the Government.

The aggressions, arbitrary orders, stoppage of trains, seizing of goods, damages to real property, forced requisitions—in short, all the violence of which the firm complain, and which reduced their affairs to such a state that they were finally compelled, at a time when all communications were interrupted, to sell at a ruinous price materials imported from Italy, for their individual use, not for profit, seeing their exemption from import duties, but to procure means of subsistence, and to accept in charity from the Italian war vessel *Elba* gifts of flour and biscuit to satisfy the hunger of the operatives—were, indeed, partly the work of revolutionists; but from the documents

[a] See p. 730.

submitted it is equally clear that the Government was pursuing a similar course, and this attitude on its part was doubly vexatious, since setting aside the actual damage to the firm, it induced in the rebels a conviction that everything was permissible against Martini & Co., the contract with whom was now practically a dead letter.

It is therefore not against the unavoidable consequences of war that claim is made, but against that accumulation of wrongs that under cover of this abnormal state were for so long a period unnecessarily perpetrated against them.

Most grave, in view of its consequences, was the aggression suffered at the siege of Naricual, in May, 1902, by General Mejia, of the Government. The circumstances thereof, which have been wrongfully sought to be excused under the plea of military necessity, are set forth in detail in the Martini memorial and in the testimony of the witnesses. The effects were truly disastrous because the foreign workmen, stricken with fear and convinced of the danger to their lives, since no protection was to be expected even from the Government authorities, became clamorous and demanded of the firm that they be sent back home. This completed the interruption of the work, and the enterprise, henceforth completely demoralized, was driven to new and serious pecuniary sacrifices, among which may be included the payment of 631 francs to each operative, to which the firm was compelled by the arbitral sentence contained in fascicle T.

The sacking of the station and warehouses at Guanta, the destruction of movables, and the aggression of General Mejia at Naricual, all of which are proved in the testimony, are events due entirely to the Government, and their moral effects, particularly, have an exceptional importance. It was then that occurred the destruction and dispersion of documents, registers, and accounts, the loss of which fully explains the incompleteness of the claim in certain respects.

The ineffective blockade of the port of Guanta must be included among the measures which damaged the firm, not merely from a commercial point of view, in so far as it prevented exportation and the collection of duties at the port, but also from an industrial one, since it rendered impossible the replacing of the lost operatives by others, whether native or foreign. The duration of the blockade is shown from documents contained in fascicle P, in which is the decree of the governor of Trinidad, declaring that measure null and void from the beginning. As to its illegality the Italian Commissioner refers to his argument in the De Caro claim, No. 50,[a] which contains quotations from writers on international law and other authoritative opinions. He believes it opportune to add here that the question was discussed in the German-Venezuelan Commission,[b] which decided that, admitting the illegality of the noneffective blockade, damages should be awarded a claimant who based his demand for indemnity on damages produced thereby.

Among other culpable omissions of the Government there is that of not having stopped the abuse of power by the State authorities in imposing, contrary to provisions of section 11 of article 6 of the constitution of Venezuela, a duty on goods intended for exportation. This illegal exaction hinders commerce and drives it from the port of Guanta, necessarily prejudicing the firm by the consequent diminution of the port and railway rights, according to its concession.

---

[a] Page 810. [b] Orinoco Asphalt Co. Case, p. 586.

By the decree of May 27, 1903, the Venezuelan Government violated its contractual concession by reducing the port of Guanta to a coast-trade port, thereby at once changing the very object of the concession. Aside from the direct damages arising from the reduction of the general export and import trade of that port, and the resulting diminution of railway business, it is clearly proved in the memorial above named that the exploitation of the mines is wholly impossible without perfect freedom of export from Guanta, because the transfer of goods to an authorized international port would impose a burden of 24 bolivars on each ton of coal, as shown by documents in fascicle S. Now, this measure can not be justified by an appeal to the faculty which the Government has of changing the character of a port for reasons of its own, because, so far as the port of Guanta is concerned, the contract made with the firm implies a renunciation on the part of the Government of the exercise of this very right. This measure was revoked, however, perhaps in consequence of the protest of the firm's home office in Italy, a copy of which was furnished the Mixed Commission by note of the royal Italian legation in Caracas of November 14, 1903. This tardy act of reparation of the local Government having been of no avail to the firm, now permanently incapacitated from resuming its labors, cannot constitute a guaranty of peace for the future.

The fact that the firm may suffer similar risks and the direct evils flowing therefrom seriously prejudices the enterprise from another point of view, as the concession is in fact negotiable, as shown by article 15 of that instrument. Now, what capitalist would think of investing in such a contract, in the face of a precedent which demonstrates the absolute instability of its relations with the Government and the looseness of the agreements in its behalf? It may be argued that the transfer of a concession is subject to the consent of the Government, but it can not in equity be held that the Government should have agreed to this clause with the preconceived idea of refusing such a transfer in the event of the future holder of the concession being a person of consideration and means.

In short, the closure of the port shows that the Government in its relations with Martini & Co. may at any moment withdraw from its contractual obligations. Following this order of ideas, the firm call attention to the monopoly granted to one Feo of the shipment of cattle from Guanta. Feo is a Venezuelan, and either for this reason or because vessels flying the Venezuelan flag enjoy a reduction of 50 per cent on port duties, he finds it to his interest to sail his ships under the national colors; moreover Feo was bound by the Government to not cede his concession to foreign companies or individuals. Thus one of the principal resources of the port was for the firm reduced one-half.

The Italian Commissioner observes that it is here a question of a recent fact, and the firm recognize it as such in not making it the subject of special indemnity, but it merits being recorded as a proof of the hostility of the Government toward them, the more so in that the Feo concession constitutes an infraction of the provisions of article 9 of the Italian-Venezuelan treaty of 1861, still in force.

If such is the conduct of the Venezuelan Government toward the firm, it is no wonder that the revolutionists, following its example, cooperated in the work of destruction by which the company find

themselves reduced to their present deplorable state. The Commission has adopted, against the opinion of the writer, the rule that no indemnity can be awarded for revolutionary damages; but this rule is counteracted by the other, which holds that when the Government has been guilty of apparent negligence damages should be considered as susceptible of indemnity. In the present instance the diligence of the Government appears to have been highly problematical. Its interventions not only have never been of assistance to the company or of a protective character, but, on the contrary, were pernicious to their interests. It is beyond doubt that the firm would have suffered much less from the revolutionists had these latter been permitted to operate undisturbed in the State of Barcelona during the last years. It is not believed that a single instance can be given where the Government adopted a protective measure in behalf of the firm, and even General Mejia, he who had captured the shops at Naricual, remained in his functions up to the time of his imprisonment by the revolutionists and held himself overbearingly and threateningly at the interrogatories of the witnesses, a transcript of which is submitted by Martini & Co.

It would therefore seem beyond question that the Government never exhibited the least desire to protect the interests of the company, and when it is considered that, in addition to its general obligations toward citizens and foreigners residing in Venezuela, there was incumbent upon it the further duties of a contracting party, and that it was recreant thereto, it must be evident that such negligence rightfully imposes upon it the payment of the indemnity claimed by the firm.

It has several times been pointed out in this Commission that if the firm not only failed to reap the benefits expected from the concession, but actually sunk their capital in the enterprise, this should not be charged to a nonobservance of the stipulations on the part of the Government or to damages suffered, but to the fact that the enterprise was essentially a nonprofitable one. Were this statement correct, it would follow that little faith could be placed on the Venezuelan reports, official in their nature, which magnify the productiveness of the mines and the quantity and quality of the coal. The firm will hold the Government blameless as to this, as before undertaking this enterprise they had fully investigated the conditions, as amply set forth in their memorial at pages 2 et seq., and their reports accord substantially with that of Venezuela, the correctness of which they recognize and which the Government should not and can not deny.

The coal at Guanta and in the portions of the mines not yet developed is in sufficient quantity to supply the Caribbean Sea market for a great many years to come. As to its quality, the attention of the honorable umpire is invited to the dispatch of the minister of foreign affairs of Italy of December 1, 1899, and to other documents contained in fascicle R.

It has also been asserted that the Guanta coal is liable to spontaneous combustion, and testimony has been adduced to prove this, but where is the coal which will not under given conditions of weather or storage show similar tendencies? The coals of Pennsylvania and Cardiff are subject to like danger, as are all others. Are not fires on board steamers of frequent occurrence from this very cause, even where using coal other than that of Guanta? Is it likely that the Italian Government, as indicated in the above-mentioned dispatch, after the experiment of the Naricual coal, would have ordered the *Etruria* of

the royal navy to fill its bunkers with said coal if it had been more dangerous in this respect than other varieties? Besides this, Venezuela has herself used it on her ships in recent years without thought of possible accident therefrom.

The Italian Commissioner flatters himself that he has in the foregoing summed up the chief reasons militating in favor of Martini & Co., and to enter into further details would be simply repeating what has been already well set forth in the memorial and what appears fully in the documentation of the claim. The demand for indemnity should be considered in its entirety, while holding in view the fundamental elements, to wit, the capital employed, a credit seriously compromised if not wholly lost, the energy spent by the members of the company, the impediments and injuries suffered as much from the Government as from the revolutionists, the nonobservance of agreements, the constant apathy manifested in preventing or obviating obstacles of various kinds, opposing the peaceful development of the enterprise, and the special nature of the relations and obligations existing between the lessors and lessees.

To judge this case upon the restricted and narrow ground of direct and material damages suffered by Martini would be illogical and unjust. The ruin of the company is palpably the result of an abnormal state of affairs, justifying the demand for indemnity here presented, because it has been abundantly proved that one of the contracting parties was not diligent in the performance of his duties.

The firm, taking into account the deductions from the original demand mentioned in the course of this paper, claim a total of 8,997,441.34 bolivars, including the judicial expenses indicated in fascicle Q. This demand is undoubtedly susceptible of further reduction, but between the extremes of the total claimed and the complete rejection of all demands, which the Venezuelan Commissioner hopes to obtain, the honorable umpire will doubtless find a mean which will satisfy the requirements of that equity which should control the conduct of the Commission, according such an amount to the firm as will compensate its direct and indirect losses, while alleviating the disastrous consequences arising therefrom, and providing a means of renewing its activities in the near future, and renew an important but now paralyzed industry, with manifest advantage not only to the company but also to the Republic.

ZULOAGA, *Commissioner:*

The Italian company Lanzoni, Martini & Co. leased from the Government of Venezuela, on December 28, 1898, the Guanta Railroad and the coal mines called Naricual, Capiricual, and Tocoropo, situated in the State of Bermudez, for the annual rent of 104,000 bolivars, besides 50 centimos for each ton of coal extracted. This contract was approved by Congress on May 4, 1899, and ran for a term of fifteen years counting from that date. In order to carry out the contract the company Lanzoni, Martini & Co. was organized, which had a capital of 125,000 bolivars, Pilades Del Buono being a silent partner therein to the extent of 70,000 bolivars. (The latter seems to have furnished the cash capital for the company.) On July 19, 1899, the corporation augmented its capital on behalf of Del Buono to the extent of 375,000 bolivars. On July 7, 1901, Antonio Lanzoni withdrew from the company, which continued under the name of Martini & Co. Del Buono

was not only the only partner who had money, but he was the only capitalist who gave credit to the corporation. By order and for the account of the company it appears that Del Buono purchased the steamer *Alejandro*, but this latter remained mortgaged for a portion of the sum advanced. Del Buono also paid some drafts drawn by Martini & Co., although with some difficulty. By February, 1901, the company was in such a state of insolvency and disrepute that, having given an order to the English firm of John Davis & Son for £155.14 of oil these gentlemen, fearing that it would not be paid, sent the goods to Messrs. Dominici & Sons, of Barcelona.

The employees of the custom-house at Barcelona appear because of an error or because of the petition of Martini & Co. to have delivered them the goods, and the English house lost the value of them, since they sought in vain at Rome and Barcelona to obtain payment from their debtors. (The English firm made a claim against the Government of Venezuela because the custom-house had delivered the goods to Martini & Co.)

In May, 1900, Lanzoni, Martini & Co. had addressed themselves to the Government of Venezuela, petitioning it to declare the mines exploited and insinuating that having suffered because of the war they would ask that the annual rent which they should pay should be reduced. The Government answered them on September 5, 1900, agreeing to declare that the mines were in operation; and to reduce to one-half the yearly rent which was due from June, 1900; that the rent for the months of May and June should be paid completely, and that Lanzoni, Martini & Co., upon accepting these propositions, should declare "that they had no claim against the Government of Venezuela by virtue of the contract nor any other reason." The cessionaries answered this note on September 6, "gratefully accepting the concessions which the supreme chief of the Republic had made them" and "any claims which they might hold against the Government being considered as satisfied." The development company has only paid the Government on account of the lease the sum of 21,666.25 bolivars in September, 1900, which was the rent for the months of July and August of that year (as will be seen from the account in file O). Martini & Co. have presented their account with the National Government until August 31, 1903. In the account they charge sums owed by the Government which they say the latter owed by reason of railroad, harbor, and other charges, and 60,600 bolivars which they said they delivered to Gen. Martín Marcano prior to May 1, 1900, for various reasons, according to the account which appears in the file called extortion by Martín Marcano. But it will be observed, first, that these extortions of Marcano are prior to the declaration of Martini & Co. of September 6, 1900, that they held no claim against the Government on any account; and consequently if they occurred in reality they were released by the claimants in consideration of the concessions which the Government made them, and Martini & Co. so understood it, as has been said in September, 1900, that they paid a draft against the Credit Lyonais; second, that 32,286 bolivars appeared to be charged to the Government during the period from the 10th of August to the 25th of November, 1902, and during this time the government of Barcelona was a revolutionary government, and third, that none of the other sums charged to the Government are accompanied by any proof. Martini & Co. are therefore

debtors to the Government for rent due for the mines from September, 1900, and they have paid nothing for the coal extracted; that by February, 1901, they had neither capital nor credit sufficient even to pay for a shipment of oil to the value of £155.14, and nevertheless, according as they themselves say in their petition, page 13, in order to realize their plans it was necessary to spend at least £2,000,000 in the first two years.

Martini & Co., lessees of the mines of Naricual claim from the Government of Venezuela the sum of 9,064,965.42 bolivars, which they compute in their memorial at page 166, in the following manner:

	Bolivars.
Material injuries and moral offenses, damages, requisitions, confiscation of moneys and other things	326,069.00
Direct damages to the quarries and implements	1,000.00
Violences and offenses against the foreigners who compose the firm	500,000.00
Failure to perform obligations of the lessor:	
Changes in the property leased and neglect to preserve it	1,027,440.00
Failure to perform the special obligations of the contract of lease	696,288.75
Failure to maintain the lessee in peaceful possession	6,513,667.58
Total	9,064,965.42

In the 326,069 bolivars there are included the 60,600 bolivars of the so-called "extortions of Martín Marcano," which, as we have already said, were not demandable; but it is to be noted moreover that this is composed of two receipts of Martín Marcano for the value of 12,000 bolivars, each dated September 30, 1899, and October 15, 1899, and of various accounts admitted by Marcano as *compensation* for the sale of certain cattle and stacks of arms. The receipts of Marcano appear to be the amount of these accounts, since Marcano himself confesses when he says at folio 71 of the petition "that Marcano in *compensation*, and in order to give legal form to his extortions, signed these receipts." Martini, therefore, seeks to recover twice the quantity one time on the accounts and the other time upon the receipts. Besides, the total amount of these 60,600 bolivars on the one hand are credited as against the payment of rent, and on the other hand they are sought to be recovered as damages. Martini & Co. therefore seek to recover four times the amount of the supposed extortions of Marcano. The other damages which make up the 326,069 bolivars are attributable to revolutionists, and this is sufficient reason for their disallowance, but it is worthy of note that special reference is made to the value of some tons of coal which the revolutionary leader, Pablo Guzmán, ordered to be burnt at the custom-house of Guanta.

The agent of the Government of Venezuela has presented a deposition from which it is clearly proved that the destruction of this coal was with the consent of Martini; that he personally directed the operation, ordering that a part of it be burnt by making use of cans of coal oil, and that another portion of it be thrown into the sea; that it was known by all that the operation was gotten up by the lawyer of the company, and that the greater portion of the coal thrown into the sea was of a very poor quality, since it was only dust; that all the coal was not destroyed, and that Martini & Co. had since disposed of a portion of it for the use of the railroad and by selling it to individuals. By the destruction of the coal the cessionaries thought, as would appear, to carry out a profitable undertaking, collecting from the treasury of Venezuela for coal that was not marketable.

Martini & Co. seek to recover 500,000 bolivars for violence inflicted upon the persons of those who constitute the firm, and these persons are Martini & Fazi, since Del Buono is not in Venezuela.

In the allegations which Martini & Co. make with respect to this point there are many injurious imputations cast upon the Government of Venezuela and upon the country; but nothing concrete and to the point. In the charge alone which treats of the supposition that an official of the Government by the name of Carmen Mejias entered into Naricual committing assaults upon the foreigners appears to be discredited by all the witnesses who are presented, who affirm exactly the contrary of what Martini says. The witness Casimiro Pinelli says—

that the soldiers committed some wrongs, and that they themselves said that the Italians were no good, but that these latter suffered no personal injuries.

The witness Juan Caprara says)—

that with respect to the recruiting of workmen, the troops took one Venezuelan laborer that he had under his charge, but that they did not recruit any Italians, nor did they interfere with them.

The witness Nicolás Amore says—

that the soldiers of Mejias took the horses of the company, but that he and other persons having spoken with Mejias, the latter decided that the animals should be returned, as was in fact done.

The witness Bartolo Tononi says—

that an attempt was made to recruit Venezuelans from the works of Martini & Co., but that this was given up by the mere friendly intervention of the engineers, Antonio Martini and Francisco Fazi; that they took a saddle horse from Mr. Martini, but that they returned it to him afterwards.

Martini & Co. seek to recover 1,027,440 bolivars for injury to their credit by reason of a decree of the Government of Venezuela, dated May 27, 1903, in which by virtue of its powers, in accordance with article 10, law 14, of the code of the hacienda, it temporarily suppressed the custom-house of Guanta. Those who had no credit in 1903 could hardly suffer therein—they were bankrupt since 1901. The partners were in that state of penury that the partner Fazi was not able, about September, 1902, to pay his baker an account of 165.45 bolivars, for which he made Martini & Co. responsible, and which they did not pay, either (p. 3 of the deposition of Victor Cotta).

The decree of the Government of Venezuela is perfectly lawful.

Martini & Co. seek to recover 696,288.76 bolivars under the name of "failure to perform special obligations of the contract of lease," because the Government recruited the Venezuelan laborers, violating article 13 of the contract; and thereby they seek to secure the return of the amount of rent from April, 1902, to May, 1903, amounting to 120,155 bolivars, or, say, the return of a sum which they themselves have not paid; and second, the delivery of imaginary sums which they say were necessitated to repair the railway to the mines, which, according to Martini & Co., is in the most deplorable state, since no repairs have been made. The repairing and improvement of the line were by an express stipulation of the contract to be at the cost of Martini & Co. If they have not fulfilled this obligation, as they declare, they have fundamentally failed to perform the contract, and it is a singular idea to seek to recover a sum which in any case they themselves owe.

The last item of the claim of Martini & Co. is 6,513,667.58 bolivars for "the failure to carry out the guarantee of peaceful possession of the

property leased." The items which make this up are as inconsistent and absurd as those already considered, and it appears useless to make any specific observation upon them, since they are in truth the same as those already considered and rejected.

The examination of this claim shows, moreover, that the alleged failure in this covenant, with respect to Martini & Co., is false, and that, on the contrary, the authorities have always protected them as far as was compatible with the disturbed state of the country. It moreover appears that Martini & Co. have not fulfilled the obligations which were imposed upon them by the contract; that they have not paid the rent; that they have not only not preserved the property leased to them, but they have allowed it to deteriorate for the want of the most simple repairs; that they have committed fraud against the Government of Venezuela, selling the Roman cement and other goods which they introduced free of duty for the use of the enterprise; that they have sold things belonging to the railroad, which is the property of the Government.

The claim should be totally disallowed.

Every claim arising out of the contract ought to be prosecuted before the courts of Venezuela. Martini can not claim before the Mixed Commission for supposed breaches of the contract, since the Government can oppose thereto objections arising out of the contract.

RALSTON, *Umpire:*

The foregoing reclamation has been referred to the umpire upon difference of opinion between the honorable Commissioners for Italy and Venezuela. Briefly stated, the facts are as follows:

On December 28, 1898, by contract approved by the Federal Congress on May 29, 1899, the Venezulan Government granted to Lanzoni, Martini & Co., of whom the claimants are the successors, for the term of fifteen years from the date of the approval of the contract by Congress, a national enterprise known as Ferrocarril de Guanta y Minas de Carbón, denominadas Naricual, Capiricual y Tocoropo, situate in the Bolívar district of the State of Bermudez, including in the lease wharf for the embarkation of coal, warehouse, workshops, railways between Guanta and the mines, with rolling stock, material on hand, bridges, the said mines and the other rights and the actions belonging to the National Government in the said enterprise.

The territory so rented embraced 810 kilometers superficial area, and the railroad from Naricual to Barcelona was some 17 miles long, and from Barcelona to Guanta some 19 miles.

In consideration of the foregoing lease the company undertook to pay annually to the National Government in cash the sum of 104,000 bolivars, which was to be delivered in monthly quotas of 8,666 bolivars, 66 centimos. The company was further to deliver to the Government in lieu of other taxes 50 céntimos for each ton of carbon exploited.

The company was to have the right to charge the then existing tariff for passengers and freight and wharf rates, without the right to augment them in any case; the Government undertaking to preserve closed the port of El Rincón, or Guzmán Blanco, except for vegetables and certain small articles.

The National Government was to enjoy a reduction of 50 per cent

upon the tariff ordinarily charged for its employees on business and for freight upon goods consigned to the Government.

The company was obliged at its own cost to make all improvements, repairs, and enlargements which were necessary for exploitation on a large scale, as well as to perfect the railway and rolling stock; all of which work was to be commenced within four months after the approval of the contract by the National Congress, and to be terminated eight months after such date, which might, however, be extended for four months more in case of force majeure.

The company undertook to give preference in employment to the laborers of Venezuela over foreigners.

If the company had fulfilled its contracts for the term of the lease, the Government was obliged to extend its concession for ten years more, at the end of which time the lessees obliged themselves to deliver to the National Government, under inventory and in perfect state of preservation, and without any right of indemnity therefor, all the stock given by the Government, with its improvements. The Government was obliged, even in case of war, to exempt from all military service the personnel employed in the mines, railways, or service of the enterprise.

It was further provided that the doubts and controversies which might arise upon the meaning or execution of the contract should be decided by Venezuelan tribunals in conformity with the laws of the Republic, without it being possible that they should be made in any case ground for international reclamation.

Inventories were had of the property leased the company, which inventories were accepted by Lanzoni, Martini & Co., September 9, 1899, and the work under the contract was officially declared commenced September 18, 1899. We may at this point remark that some of the complaints of the company are addressed to the fact that the property delivered to it was in much worse condition than it had expected at the time the contract was originally entered into, but the company having accepted the inventory, one is compelled to disregard all that is now said upon this point.

The company complains of various grievances occurring in the years 1899 and 1900, but these also must be dismissed with a word, because by its letter of May 23, 1900, the company applied to the Government for a rebate of rent on account of the injuries referred to, and under date of September 3, 1900, in response to this application, the company was notified that its annual rent would be reduced one-half for the year from July 29, 1900, to the same day in 1901, provided the company in accepting this concession should declare that it had no claim against the Government by virtue of the provisions of its contract, or for any other reason, and upon the following day (September 6) the company accepted gratefully the concessions made to it by the Chief of the Republic, recognizing as satisfied whatever claim it might have against the Government under the contract on account of the events in question. It is not, however, the opinion of the umpire that this settlement extended to the claims of the company under "vales" to the amount of 60,600 bolivars, issued by President Marcano, of the State of Bermudez.

Historically, it may be noted that on the night of August 9, 1902, Barcelona was taken from the Government by troops of the revolution, and the civil authorities were named by them; that on November 26,

1902, Barcelona was reoccupied by the Government; that on February 17, 1903, the governmental forces retired; and on February 19, 1903, the revolutionists took possession of the town, retaining such possession until after a bloody conflict, lasting from April 5 to 10, when they were ejected. In addition, there were many skirmishes in and about Barcelona within the dates mentioned, and the history of Guanta was much like that of Barcelona.

A paper blockade of the port of Guanta was proclaimed in August, 1902, Guanta then being in the possession of the revolutionists, and this blockade continued during all the time of the revolutionary possession. It is to be noted that for about two months, in December and January, 1902, and February, 1903, Great Britain, Germany, and Italy maintained a blockade by force. In addition, it may be remarked that on May 27, 1903, the Government reduced the port of Guanta to the third category, so that thereafter, and until February 1, 1904, it was not open to foreign commerce.

We may now enumerate the various heads of claims as set out in the memorial, as follows:

	Bolivars.
Material injuries and moral offenses:	
1. Injuries, requisitions, appropriations of money, etc	326,069.00
2. Direct damages to its quarries and implements	1,500.00
3. Injuries and offenses against foreigners composing the undertaking	500,000.00
Failure under the obligations of the lessor:	
4. Impairment of the thing rented and lack of its preservation, including return of rent and lost gains	1,027,440.00
5. Lack of performance of the special obligations of the contract of rent, including lost profits	696,288.76
6. Failure in the guarantee of the pacific enjoyment of the thing rented	6,513,667.58
Total	9,064,965.34

It is manifest from the above statement that the same items have been repeated several times, and that properly analyzed the claim should amount to about one-third of the above.

Before proceeding to study more in detail the various headings of the claim, we must bear in mind that the claimants are still in possession of the property rented to them, and that if the Venezuelan Government had fixed its rent upon the basis of a return of 5 per cent upon the value of the thing rented, the entire valuation of the subject-matter would be but 2,080,000 bolivars. It will also be borne in mind, before commencing a detailed examination, that as early as July, 1901, the company, through its offices, either in Venezuela or in Italy, was unable to meet the claim of John Davis & Son, of Derby, England, for the sum of £155, and besides was indebted to various individuals in different amounts, and in March, 1902, owed its limited partner, Del Buono, some 2,000,000 bolivars, with outstanding acceptances estimated at 800,000 bolivars.

Let us make a succinct summary of the various injuries of which the company complains, eliminating offenses committed by revolutionists and trivial offenses, such as personal insults to employees, and limiting ourselves as to the rest to proven offenses.

Early in the morning of May 29, 1902, the revolutionary troops passed through the town of Naricual, where were located mines and shops of the claimant. Two hours later Government troops, under the command of General Mejias, reached Naricual and fired several

volleys into the town from different points, the shots piercing the habitations and injuring or destroying property, no lives being lost. At this time the general referred to attempted to carry off workmen, but after Martini's intervention recruited but one man.

The following day the Government troops returned and again attempted to recruit Venezuelans in the employ of the company, who, however, fled with one or two exceptions. The forces took some food and small articles. It is further stated that at various times Venezuelans were recruited even from the quarries of the company. As a consequence the Venezuelan laboring force was completely disorganized and its members terrified and dispersed. On many occasions Naricual was occupied by governmental troups who took hens, hogs, etc.

During the war the towns between Barcelona and Naricual abandoned care of the roads, and as a consequence the railway line was used as a means of transportation by men and animals and railway traffic was abandoned.

On September 16 and 17, 1902, the revolutionists threw into the sea or set on fire, to prevent national vessels from using it, some 5,697 tons of coal, worth from 25 to 30 bolivars a ton, and it is said that the Government was responsible therefor, because, having closed the port of Guanta and prevented its exportation, it necessarily fell later into the hands of revolutionists.

It is further stated that during fights between revolutionists and the Government workmen were compelled to give up repairing the wharf, and the train officials were insulted and interfered with in their management of the trains.

On November 28, 1902, Venezuelan vessels of war fired on the Guanta custom-house and station. The proof upon this point is not uniform; some witnesses saying that there were 70 revolutionists who commenced the firing, and others fixing their number at 25, and some witnesses placing the responsibility for the beginning of the firing upon the Government. According to part of the testimony, both custom-house and station were occupied by the revolutionists. When the Government troops landed, it is said that they entered the custom-house and station and destroyed much property of the company, including all their books of account, and also destroyed the cattle corrals and injured the wharf.

We further find that on June 6, 1902, workmen were recruited and others could not be obtained, while President Marcano prevented the delivery of merchandise for eight or ten days in the same month. In many cases the consul at Barcelona sought a release of Venezuelans who had been recruited, often successfully and again unsuccessfully, while President Marcano at all times maintained his right to recruit them.

In the counter proof it is shown, among other things, that the company sold part and used another part of the coal said to have been burned by revolutionists, and it is contended that the company is heavily indebted on its account of rent to the Government, having only paid 21,666.65 bolivars.

The honorable Commissioner for Venezuela submits, as a preliminary question, objection to the jurisdiction, based upon article 16 of the contract, which reads as follows:

Las dudas ó contraversias que puedan suscitarse en la inteligencia y ejecución del presente contrato, serán resueltas por los Tribunales de la República, conforme á sus leyes, y en ningún caso serán motivo de reclamaciones internacionales.

Even if the dispute now presented to the umpire could be considered as embraced within the terms "Las dudas ó contraversias que puedan suscitarse en la inteligencia y ejecución del presente contrato," in the judgment of the umpire the objection may be disposed of by reference to a single consideration.

Italy and Venezuela, by their respective Governments, have agreed to submit to the determination of this Mixed Commission the claims of Italian citizens against Venezuela. The right of a sovereign power to enter into an agreement of this kind is entirely superior to that of the subject to contract it away. It was, in the judgment of the umpire, entirely beyond the power of an Italian subject to extinguish the superior right of his nation, and it is not to be presumed that Venezuela understood that he had done so. But aside from this, Venezuela and Italy have agreed that there shall be substituted for national forums, which, with or without contract between the parties, may have had jurisdiction over the subject-matter, an international forum, to whose determination they fully agree to bow. To say now that this claim must be rejected for lack of jurisdiction in the Mixed Commission would be equivalent to claiming that not all Italian claims were referred to it, but only such Italian claims as have not been contracted about previously, and in this manner and to this extent only the protocol could be maintained. The umpire can not accept an interpretation that by indirection would change the plain language of the protocol under which he acts and cause him to reject claims legally well founded.[a]

Let us now consider the various branches of the contentions, which, for convenience, may be divided as follows:

1. Assaults upon Italian workmen and interference with Venezuelan laborers employed by the claimant.

2. Interference with the contract rights of the claimant arising out of the paper blockade and the closing of the port of Guanta.

3. Various injuries to claimant's properties.

The first two grounds of the claim are so far interwoven with respect to the damages consequent upon the events complained of that it will be convenient to discuss them together.

Let us first consider for a moment in this discussion the assaults upon Italian workmen and interference with Venezuelan laborers employed by claimant.

As appears from the foregoing, on May 29 and 30, habitations of workmen at Naricual were fired upon ruthlessly by the Government troops, and as a consequence Italian laborers to the number of 54 protested before the Italian consul at Barcelona, and afterwards demanded their immediate repatriation, being in fact sent back to Italy on July 12. Fifty of these laborers afterwards submitted to arbitrators their claim against the company, and the arbitrators in their judgment dated September 3, 1903, said that:

The political situation of the country, troubled for many years by constant and ceaseless civil wars, rendered it impossible to carry on peacefully the work of the mines. * * * Things got worse around May, 1902, so that the mining properties, the employees, and even the owners were exposed to very great dangers and threats

[a] For full discussion of the points here decided see Orinoco case, p. 73; Rudloff case, p. 183; Turnbull, etc., case, p. 201, and Selwyn case, p. 322.

by the Government troops without any cause or justification. * * * The jury finds, moreover, that on May 29, 1902, the regular troops of Venezuela, without any justification, invaded the mines of Las Minas near Naricual, firing on the mining properties, factories, offices, and buildings and railroad stations, all belonging to the firm. Some of the Italian laborers ran the risk of being killed. The houses of some others were looted. Even Mr. Martini was in grave danger, while some of the native laborers were forced into the army in open violation of contract. These events caused a panic among the workmen, inducing them to what was described "a justifiable decision to leave Venezuela" in the protest filed by the firm with the minister of Italy at Caracas on July 10, 1902.

The members of the firm spared no care in defending their countrymen and employees, as was their duty as defendants of the men they had engaged, but the political situation was getting rapidly worse, as appears by the above-mentioned consular document; food was scarce and supplies were not to be had; banking transactions were impossible even on usurious terms; the native laborers all around Naricual caught by the panic fled, so that railroad service was severely crippled, and the work incidental to mining entirely stopped. Next the sanitary service, which the firm had been organizing, ceased operating; wages which theretofore for the same cause had been paid irregularly were now entirely suspended, and the transmission of money by the laborers to their families in Italy became rare and difficult. The workmen, who two days after May 29, after the actual panic had passed, had resumed their work found themselves face to face with the situation which the jury agrees with the complaints made by the firm in terming unbearable. This was rendered even worse and more painful by the letters received by the laborers from their families in Italy, setting forth the suffering at home from lack of the support they had been used to receive.

It further appears from the arbitral decision that not until September 1 were the complaining laborers paid for work actually done at Naricual up to and including July 9, they sailing for Italy from La Guaira on July 17.

As the result of this arbitration the claimants were held liable for—

lack of the clear foresight regarding the work offered which is obligatory upon every employer of laborers, and especially upon one seeking men for work in places far from the mother country and which takes them away from the material comforts and moral comforts which are found in the bosom of the family and in the protection of the mother country.

The arbitrators allowed a total of 631 lires, equivalent to the same number of bolivars, to each one of the fifty complainants.

The umpire is disposed to accept the view that Venezuela is, to an extent, which he will endeavor hereafter to fix, responsible for assaults committed upon Italian laborers—assaults of such a nature as might well have deterred any others from taking their places—and is also responsible for the repeated acts of its military authorities in attempting to enlist in its armies Venezuelans employed by the company—acts which were in express derogation of the terms of the contract of rental hereinbefore recited.

Let us now, before considering the measure of damages, turn to the matter of the paper blockade and the closing of the port of Guanta by governmental order.

From about August 10, 1902, until April 10, 1903, save during the period of actual blockade by the allied powers, and the time of its possession by the Government, Guanta was blockaded by proclamation. No naval force, however, was maintained in the vicinity to enforce the blockade, and such blockade was therefore illegal under the authorities referred to in the case of De Caro[a] already decided.[b]

---

[a] See p. 810.

[b] The Convention of Paris, 1854, provides:

4. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du territoire ennemi. (Revue de Droit International, 1869, p. 157.)

Shortly after the termination of the paper blockade, and on May 27, 1903, the Government reduced the port of Guanta to what is known as the third category of ports, and in so doing cut off its foreign commerce, and this condition lasted until the port was reopened by Executive order, dated February 1, 1904. In the opinion of the umpire, this closure, while entirely legal and within the power of the Government as against the world at large, rendered the Government liable to an extent hereafter to be discussed, under its original contract with claimant's predecessors. It will be borne in mind that by that contract, claimant's predecessors received possession of the wharf of Guanta, with the right to charge and collect port duties. It must be assumed that this right was obtained, and that the whole contract was signed upon the theory that the port of Guanta was to be maintained as a port of at least the same degree of importance it then possessed. The contract is to be interpreted in the light of the surrounding circumstances, and one of the most significant of them was the importance of Guanta as a port of entry. It is not to be supposed that Lanzoni, Martini & Co. received the contract with the idea that the Government retained the power the following or any subsequent day to change its provisions, destroying or impairing the usefulness of the points of ingress and egress to and from the railways and mines. To allow the existence of such a power in the Government as a contracting party would be to give one of the parties to the contract the right to destroy all the interest of the other party in it.

We arrive, then, at the very important question as to the measure of damages for which the Government is responsible because of these several acts—that is to say, interference with the foreign workmen, with the native workmen, with the port by paper blockade, and with the rights of the contracting party by closure of the port.

As has already been demonstrated, the Government materially interfered with the labor of the foreign workmen, the natural result of its action being to prevent the employment of others. It interfered with the native workmen by a system of repeatedly attempted recruitings in plain violation of the contract. It (by paper) blockaded the port, and consequently diminished the value of the railroad concession for about five months, and it almost completely paralyzed operations under the concession by closing the port for a period of eight months.

It appears in proof that at the time the habitations of the foreign workmen were fired upon in May, 1902, the mine was capable of a daily production of 150 tons of the usual value of 25 bolivars per ton, upon which the company might ordinarily have expected a profit of about one-half, and the first question arising is whether the Government should be held responsible for this loss of profit during the period of twenty months from about the 1st of June, 1902, to the 1st of February, 1904.

It is the opinion of the umpire, several times expressed, that Venezuela is not to be held responsible for speculative profits, but the profits in the present case are not entirely speculative. In a question of contract presented to the Supreme Court of the United States, in Howard *v.* Stillwell, etc., Manufacturing Company, 139 U. S., page 199, it was said:

> It is equally well settled that the profits which would have been realized had the contract been performed, and which have been prevented by its breach, are included

in the damages to be recovered in every case where such profits are not open to the objection of uncertainty or of remoteness; or where, from the express or implied terms of the contract itself, or the special circumstances under which it was made, it may be reasonably presumed that they were within the intent and mutual understanding of both parties at the time it was entered into.

While this language is not absolutely in point, it indicates that if a clear measure of damages exists with relation to future business, it may be invoked.

We find that by a contract entered into between Del Buono and his associates in March, 1902, the company agreed to furnish coal to Del Buono for the first year thereafter at the rate of 30,000 tons, and for the second year 50,000 tons, with an additional amount in subsequent years, which, however, does not concern us. To this extent the company had an assured market, with a reasonably well-established profit on its business. We are informed that this contract was notified to the Government April 12, 1902.

Bearing in mind the proven capacity of the mine, this amount of coal could have been furnished—that is to say, from June 1, 1902 (about the time the troubles of the workmen commenced), to April 1, 1903, 25,000 tons; and from April 1, 1903, to February 1, 1904, 41,666.66 tons; or a total of 66,666.66 tons for the twenty months. From this may fairly be deducted for the two months of blockade of the allied powers 5,000 tons, leaving a net total of 61,666.66 tons, upon which it could have made an average profit at the rate of 12½ bolivars per ton, or 770,833.25 bolivars.

It would, however, be manifestly unfair to hold the Government responsible for this amount, because a very large part of the difficulty in working the mines was due to the direct action of revolutionists, with whom the Government was at war, and another considerable percentage must be attributed to the fact that the mines could not have been worked with thorough success even had the Government properly performed its duties, because of the existence of a state of warfare in the neighborhood of the mines and railway, as well as at the port of Guanta, a condition for which the Government can not be held to contractual or other responsibility. The umpire, therefore, feels that he would be performing his full duty in solving this very troublesome question if he were to allow in favor of the company one-third of the amount it could have gained under the Del Buono contract, or the sum of 256,944.42 bolivars.

The umpire does not ignore the fact that the mine might have sold its coal to others than Del Buono, but he attaches little importance to possible sales of this character, because, as appears in the proof, from the opening of the concession to the 20th of February, 1901, only 7,271 tons had been extracted, and from the last date up to July 12, 1902, including about a month's work of the Italian laborers, only 7,500 tons additional were supplied, making a total from September 18, 1899, to July 12, 1902, of 14,771 tons, or a daily average of about 18 tons.

In the foregoing calculation, and in another to be subsequently made, the umpire estimates damages in favor of the claimant up to February 1, 1904, not ignoring, however, the fact that the last date upon which claims could have been presented before the Commission, and therefore, in his opinion, the last possible date to which, under

ordinary circumstances, damages could be claimed, was August 9, 1903, but he is influenced by the legal principle stated in the American and English Encyclopædia of Law, 2d edition, volume 21, page 732, and expressed as follows:

> When a court of equity grants relief by injunction for the abatement of a nuisance, it may award damages also if prayed and proved. In such case the usual practice is to assess the damages up to the rendition of the decree, in order to prevent further litigation.

To the above proposition many American and English cases are cited, and the damage in question, being continuous in its nature, is believed to fall within its clear reason.

By reason of the paper blockade and the closure of the port of Guanta, as well as interference with laborers, Italian and Venezuelan, the contract was broken by the Government, as hereinbefore set forth, and this breakage of contract forms an element of damage quite distinct from that involved in interference with the working of the mines. For if gangs of workmen employed in the maintenance of the railway were driven off and freight of all kinds could not longer be received at Guanta from abroad or carried to that port for exportation, then to perhaps an absolute point the concession became valueless. Such was the case, as we have seen, during the five months of paper blockade and eight months of closure of port, the interference with laborers bringing up the total time during which the contract was affected by governmental acts to twenty months. The rent due by the firm to Venezuela for this period would be 173,333.33 bolivars.

The umpire finds by the statement of account between the company and the Government presented by the company, made to September 1, 1903, that allowing the "vales" of General Marcano for 60,600 bolivars, which seem not properly embraced in the settlement of September, 1900, the Government was indebted to the company in the sum of 15,185.74 bolivars. In this account, however, credit is asked for 33,957 bolivars for services rendered the revolution. This must be rejected, leaving the company indebted to the Government on September 1, 1903, 18,771.26 bolivars. The account may, therefore, be stated as follows:

CREDIT.

	Bolivars.
Rent allowed by this opinion and sentence based hereon from June 1, 1902, to February 1, 1904	173,333.33

DEBIT.

	Bolivars.	
Balance due September 1, 1903, to Government	18,771.26	
Rent to Government from September 1, 1903, to February 1, 1904	43,333.33	
		62,104.59
Balance due lessees on this account		111,228.74

This award must be made, however, without prejudice to the rights of the company to recover in other tribunals for services rendered after September 1, 1903.

Let us now refer to the third head of damages, to wit, the various material injuries to claimant's properties.

The most important of these is stated to be the throwing into the sea or the burning up by the revolutionists of 5,697 tons of coal on

September 16 and 17, 1902. Responsibility is charged on the Government for this loss, the theory being that the Government, by its paper blockade of the port of Guanta, had prevented the exportation of the coal, thereby permitting its loss at the hands of the revolutionists. On the other hand, it is argued that at least 150 tons were sold to private parties or burned by the company itself, while it is suggested that much of the coal was doubtless worthless through long exposure prior to the blockade.

The umpire believes that the Government is responsible for the loss of the coal, having prevented its exportation, but he can not ignore the fact that some of it was used as stated, and that much of it in all probability, because of exposure, had slight value. He believes he will do full justice if he allows for the destruction of 2,500 tons, at 25 bolivars a ton, or a total of 62,500 bolivars.

Other damages than those above enumerated (including thefts) may be referred to, but although dwelt upon at length in the memorial, the proof does not show that the material loss involved was great. The umpire believes that for them an allowance of 10,000 bolivars will be ample.

No account is taken of the injury to the railroad track, consequent upon its being turned into a passageway for animals, the authorities being pecuniarily unable during the war to keep up the roads. This was an unfortunate consequence of war for which the company can claim no personal indemnity.

Many of the other claims for damage rest upon the existence of war, for which Venezuela can not be specially charged, however regrettable the facts in themselves may be.

It is strongly urged upon the umpire that large damages should be awarded under the head of lack of pacific enjoyment of the thing rented, and aid is invoked of the principle embodied in section 1575 of the Italian, and section 1529 of the Venezuelan Civil Code, making it the duty under any contract of the owner renting property to maintain the lessee in the peaceful enjoyment of the thing rented during the time of the contract. This simply means that such enjoyment shall be preserved as against the owner and others claiming title, but is no covenant against the action of trespassers. As far, therefore, as the Government may thus be legally responsible, the umpire has, in this opinion, sought to hold it to such responsibility.

An award will therefore be signed for 439,673.16 bolivars, with interest at the rate of 3 per cent per annum from October 30, 1903, to December 31, 1903, without prejudice to the claimant to demand payment from the Government in any forum having jurisdiction for services rendered after September 1, 1903.

POGGIOLI CASE.

(By the Umpire:)

The widow and children of an aggrieved Italian, who were all born in Venezuela and have always lived in that country, can not claim as Italian subjects before this Commission (affirming Brignone and Miliani cases).[a]

Venezuela is responsible for damages inflicted upon the property of a foreigner where she has allowed serious offenses to be committed against him personally and the offenders, although known, to go unpunished, and where the authorities, in conjunction with such offenders and with others, have depredated his property and driven off his employees, and no relief been afforded, although frequent complaints were made.[b]

A general claim for loss of credit is too indefinite and uncertain to be taken into consideration.

---

[a] Pp. 710 and 754.

[b] In addition to the authorities upon this point cited in the decision, attention is called to the Ruden case (Moore, 1653–1655).

It was shown that on January 14, 1868, the inhabitants of Motupe invaded the claimant's plantation of Errepon and burned the buildings and fences; that on February 14, 1868, Ruden appealed to the executive power and demanded an indemnity, at the same time charging guilty omission on the part of the authorities; that the executive power two weeks later asked the prefect of the department for a report, and that the prefect ordered the subprefect to make one; and that the latter, on May 22, 1868, reported that Errepon had been burned, but that he could not then go to the plantation and ascertain the value of the property burned, as the roads were bad. No further steps were taken by the authorities till, three months afterwards, the prefect, urged on by Ruden, directed the subprefect to make another report; but in reply to this order the first report, which was deficient and passionate, was merely repeated. In July, 1868, the executive power, without having come to any decision, sent the papers to one of the government attorneys. A third petition of Ruden met the same fate, having been held without action for fourteen months. The facts were not investigated, nor were the guilty parties prosecuted. An order was indeed given for an investigation, but it was avoided. The judicial authorities, when appealed to for an investigation of Ruden's claim, refused to entertain it, on the ground that an executive order had forbidden the trial of suits against the treasury. And while justice was thus denied, it was charged that the local authorities were concerned in the attack on the plantation. A report of the consular body, drawn up at the place, declared that the burning of estates, both native and foreign, at the time and place in question, was committed by armed forces under the command of officers. On all these grounds the umpire held Peru liable for the burning.

The case of Johnson (Moore, 1656–1657) was similar to the Poggioli case in many respects, it being borne in mind that the laws of Venezuela only recognize responsibility for the acts of officials working in a public capacity. In the case now referred to the claimant's

property was destroyed, and he was personally and permanently injured by armed bands, headed by the governors of adjacent towns, instigated by the superior authorities of the province, who were dependent upon and immediately represented the supreme government. The supreme government issued a decree to the effect that the injuries should be redressed, but nothing substantial was done, nor were any of the malefactors punished. The Peruvian Commissioner had contended that it was necessary that Johnson should have had recourse to the courts and have been denied justice. But it was known that the judges of the province of Lambayeque were menaced and controlled by the mob, and, if not in sympathy with them, in a panic; and that it would have been useless to appeal to them. Mr. Elmore (the umpire) declared, however, that there had been an actual denial of justice. By the circular of the minister of justice of Peru of September 13, 1853, the judges were forbidden to receive expedientes affecting the law of December 25, 1851, closing the consolidation of the public debt. By that circular the courts were closed against the sufferers at Lambayeque. Mr. Elmore cited two cases of the actual denial of petitions of persons injured in Lambayeque on the ground of the circular referred to. One of these was the case of Ruden & Co., who applied April 2, 1868, to the judge of Lambayeque and were denied a remedy on that ground. The claimants were thus without hope. If they applied to the courts they were told they had no remedy. If they applied to the commission they were told that they must apply to the courts. Mr. Elmore therefore awarded the claimant the sum of 11,480 Peruvian silver soles.

The fundamental principles affecting the responsibility of the respondent are discussed by Commissioner Little, of the American-Venezuelan Commission of 1890, who held in the de Hammer case (Moore, 2968) that—

Venezuela's responsibility and liability in the matter are to be determined and measured by her conduct in ascertaining and bringing to justice the guilty parties. If she did all that could be reasonably required in that behalf, she is to be held blameless: otherwise not. Without entering upon a discussion of the investigation instituted and conducted by her, it seems there was fault in not causing the leaders, at least, of this lawless band to be arrested. It was notorious who they were. It does not seem that any attempt was made before any local authority to bring them or any of the band to justice.

In the same case Commissioner Findlay held (Moore, 2969) that—

a state, however, is liable for wrongs inflicted upon the citizens of another state in any case where the offender is permitted to go at large without being called to account or punished for his offense or some honest endeavor made for his arrest and punishment. (Opinions of American-Venezuelan Commission of 1890, p. 486.)

No allowance will be made for the closure of a port, whatever reasons may have induced it, when no contract relations between the government and the claimant are in question.[a]

Allowances will be made for loss and destruction of crops consequent upon violence and depredations inflicted by agents of the government, together with unpunished malefactors.

AGNOLI, *Commissioner* (claim referred to umpire):

The claim which Silvio Poggioli, for himself and the heirs of his deceased brother, has submitted to this Commission, excels in accuracy and efficiency of proof. The writer supports it warmly, and by way of preamble will cite the opinion of Fiore (Treatise on Public International Law, Vol. I, sec. 651), on which he bases his own, regarding the responsibility of the Venezuelan Government toward the claimants. Here are the words of the eminent jurist:

Let us suppose that, having examined the circumstances, it is found that the public officials who by their own act injured the interests of foreigners while operating with a common intent in such a manner as to justify the assumption that they were under the orders of higher authority; or let us imagine that a government has neglected to take timely steps to avert certain acts, or that it has directly or indirectly approved the doings of its officers. In these and all similar instances justice and equity require that the state be held diplomatically responsible therefor, and be obliged to repair the damage.

Before entering into a detailed examination of the claim the Italian Commissioner deems it proper to observe that, in accordance with the views expressed by him in former claims, he holds in this, that the widow, no more than the children of the deceased Poggioli, can be excluded from a share in whatever indemnity may be awarded. To the juridical reasons which he has in this regard expressed on previous occasions he desires to add arguments based on equity.

Americo Poggioli was, presumably, murdered by one of the men who, as will appear in the sequel, had attempted the life of his brother Silvio, and who were arbitrarily liberated by Gen. Diego Bautista Ferrer. However this may have been, he was the victim of an act committed on Venezuelan soil, and the perpetrators remained unpunished. Under these circumstances the writer finds another reason why the heirs of the victim should not be denied the right to apply to this tribunal for redress. Should the foregoing contention not find acceptance with the honorable umpire, it will certainly not escape his diligent examination of the case that Silvio Poggioli was, before as well as after the death of his brother, the sole manager and responsible agent of the commercial affairs of both. From the contract drawn up between them in March, 1892, it appears, further, that the assets of the firm were, on December 31 of the preceding year, 2,803,524 boli-

---

Footnote continued.

The rule laid down by Bluntschli in Le Droit International Codifié (sec. 380) seems in point:

L'état a le droit et le devoir de protéger ses ressortissants à l'étranger par tous les moyens autorisés par le droit international. * * *

(*b*) Lorsque les mauvais traitements ou dommages subis par un de ses ressortissants ne sont pas directement le fait de l'état étranger, mais *que celui-ci n'a rien fait pour s'y opposer.*

We may add as follows:

The responsibility of the state results from its neglect or inability to control the conduct of its subjects, or its neglect or inability to punish the offenses and crimes which they commit. (Halleck, International Law, Ch. XI, sec. 6, citing Vattel, Droit des Gens, liv. 2, ch. 6, secs. 71, 72; Phillimore, International Law, Vol. I, sec. 218; Rutherforth's Institutes, b. 2, ch. 9, sec. 12; De Felice, Droit de la Nat., tome 2, sec. 15; Burlamaqui, Droit de la Nat. et des Gens, tome 4, pt. 3, ch. 2.

[a] Compare Martini case, p. 819.

vars, and the liabilities 1,234,729 bolivars, including 72,000 bolivars due Manuela Rosales; that therefore the net balance amounted to 1,568,795 bolivars; that the personal share of Silvio was 501,703 bolivars, the common share 1,067,092 bolivars, and that consequently the total amount of Silvio's interest, 1,035,249 bolivars, constitutes 65.99 per cent of the whole, and even under the most unfavorable estimate he would be entitled to a proportionate share of the indemnity on the basis of this calculation.

Should the honorable Commissioner for Venezuela raise a question of principle and deny the right of the Poggiolis to appeal to this Commission, on the ground that they were not included among the Italian claimants for indemnity for the war of 1892, whose claims were subsequently quieted by the representations of the royal minister, Count Roberto Magliano, to the Venezuelan Government, the undersigned would hasten to reply that in his opinion such an exception should not be sustained, for the reasons set forth in his memorial anent the claim of Constantino Murzi.[a]

With these premises laid down, he will now proceed to a detailed study of the circumstances and motives of the present claim.

The Poggiolis asked for indemnity for five kinds of damages, to wit:

1. Requisitions of animals and merchandise and destruction of crops and property.
2. Arbitrary closure of the port of Buena Vista.
3. Personal insults, threats, and imprisonments.
4. Forcible separation from their property, and consequent abandon-

---

[a] No opinion was filed by Doctor Zuloaga in this case, and it never reached the umpire. Mr. Agnoli's opinion is as follows:

The honorable Commissioner for Venezuela rejects the above claim on a question of principle—that is, he holds that the claimant has forfeited every right to demand indemnity before this Commission, because his claims go back to and have their origin in the civil war of 1892, after which the Italian Government had settled with the Government of Venezuela on account of other claims arising from the same war.

The Italian Commissioner, without reiterating the reasons given by him on former occasions why, in general, the opinion of his honorable colleague should not be accepted as establishing the forfeiture of the right of Italian citizens to urge their claims before this arbitral tribunal for damages occurring prior to wars of the last five years, observes that this special objection, as regards the claims of 1892, is singularly inconsistent, since various claims of that period, and particularly that of Giuseppe Menda, No. 199, and that of Giuseppe Lasala, No. 6, have been discussed and favorably received.

Doctor Zuloaga's objection seems to be based on the fact that Count Magliano, formerly Italian minister in Caracas, in his private note of August 30, 1894, addressed to the Venezuelan minister of hacienda, referred to a "final settlement of all claims arising out of the revolution of 1892."

The phrase employed in the aforementioned note has led the Commissioner for Venezuela to the conclusion that that settlement of indemnities was general and comprehensive.

Against this conclusion the Italian Commissioner, proceeding from the consideration that the word "surjidas" may not be applied to other claims than those the demand for settlement of which was pending before the Italian diplomatic representation, believes it opportune to call attention to the fact that the last phrase of the letter of the Venezuelan Government, to which the above-mentioned note of Count Magliano was an answer, proves beyond question that reference was made to some, not all, of the claims arising from Crespo's revolution, since by it there was asked the exoneration of Venezuela from every ulterior responsibility toward the Italian Government and toward claimants "for all such claims for indemnity as were by that agreement forever extinguished."

There remained, however, undetermined the rights of those whose claims had not been examined.

In any case this exoneration of Venezuela from all responsibility the Italian Government is not willing to accord, even with regard to the claims then settled, in the name and on account of which it refused, as appears in the letter of Minister Pirrone of December 14, 1894, to make any declaration whatsoever, "inasmuch as," says the letter, "to the understood agreement there had been given the character of a decision by reasons of equity adopted by the junta of public credit within the sphere of its competency."

This note of Pirrone, as well as the others concerning the negotiations in question, is special in its nature and proves once more the official and limited character of those acts by which neither one party nor the other assumes a more extended obligation than that which constitutes the explicit object of the stipulated agreement.

Among the claims then examined that of Constantino Murzi did not appear, nor did those of Menda and Lasala, above referred to, and others now pending, and the first-named, as well as any other dating from that period, would be wrongfully excluded by this Commission on the exception so tardily raised by the Commissioner for Venezuela.

On questions of fact in this claim it does not seem probable that disagreement may arise between the Commissioners. They are nevertheless respectfully submitted to the decision of the honorable umpire.

ment of their business from daily annoyances; total lack of protection and safety, with resulting economic loss.

5. Judicial and other expenses connected with the preparation of their claim.

A separate examination of these five heads is now in order for the purpose of establishing the amount of indemnity due thereunder.

(*a*) Requisition of 95 mules, at 520 bolivars each, equal 49,400 bolivars.

It is well known that the price of cattle in the State of Andes is somewhat higher than it is in Caracas. At all events, the witnesses have asserted that the sum mentioned was the value of these mules, and it is well to note that the witnesses summoned by Poggioli to prove the damages suffered by him have been selected from among the best known and most respected persons in that State. Among those whose names appear in the "guistificativo" No. 2, which refers to this requisition and other damages, are Gen. Ramón Rueda, who was governor of Trujillo; Dr. José Antonio Hernandez, a noted physician who is favorably known in Caracas; Col. Juan de la Paz Peña, and Col. Carlo Hernandez, wealthy and esteemed merchants and landowners; Adolfo M. Sanchez, ex-public register and now district judge of Escuque; Luis F. Carrasquero, repeatedly jefe civil and president of the municipal council of said district; Jesús Contreras, highly esteemed merchant and proprietor of the neighborhood, and other respectable persons.

The testimony of such witnesses should be accepted without the slightest hesitation or reserve.

It is true that in the contract with Mr. Ribero (Document I) a part of the mules had been valued at 400 per head in 1890, but the increase in price is easily accounted for when it is understood that the animals were taken at a time when both the Government and the "Legalista" revolution (which culminated in the advent of General Crespo to the Presidency of the Republic) were greatly in need of draft and pack animals, as well as cattle, for their respective armies.

For these reasons it is just that the amount claimed for the mules should be allowed, and for similar reasons the estimate of 200 bolivars per head of cattle should not be deemed exorbitant, although the cattle contracted for by Ribero was in part valued at 150 bolivars per head, the total under this item being 20,000 bolivars.

The sacking of the store at San José de Palmira is proved by the testimony set forth in fascicle 2, both as regards the fact itself and the quantity of the goods taken. The importance of that business house is shown by documents contained in fascicle II—that is, by the contracts with Mr. Barone, administrator of the same, and by the relative accounts and invoices. It is consequently equitable to concede an indemnity of 32,000 bolivars for this item.

The requisition of merchandise made upon the highway between Arapuez and Monte Carmelo is established by the declarations of Martinez and Nieto. The testimony of Martinez includes in general all the facts referred to in that document. The other is apparently restricted as to quantity, but taken as a whole the testimony is to the effect that all the merchandise en route was levied upon, and Silvio Poggioli declares most positively and is willing to swear that none of those goods ever reached him. Therefore, while giving due respect to any appraisement the honorable umpire may see fit to make

of this loss the Italian Commissioner holds that an indemnity of 4,800 bolivars should be allowed therefor.

The damages caused by the Government's agents in burnings at the port of Buena Vista, and by the destruction of five bridges on the road leading to said port, are estimated at 24,000 bolivars (see fascicle 2), which should be granted without prejudice to the indemnity for other damages following as the immediate and necessary consequence of said destruction and of the arbitrary closing of the port, which will be referred to further on.

We should now consider a series of damages suffered by the Poggiolis at the hands of four individuals, namely, Rudecindo Hernandez, Carlos Solarte, Rafael M. Trejo, and Faustino Suares, who wounded Silvio Poggioli. While these persons were on trial they were arbitrarily liberated by Gen. D. B. Ferrer. The records in the case were spirited away. Notwithstanding the accusations of the claimants and orders received from the central Government at Caracas, which, however, took no steps to insure their execution, as will be more fully explained in the course of this paper, the authorities of Monte Carmelo, and generally those of the State, not only allowed them to remain undisturbed, but actually used them as instruments in persecuting the Poggiolis. The negligence and malice of the authorities toward these latter, as clearly shown by all the documents exhibited to us, had one of its clearest manifestations in the passive attitude toward and encouragement of these four malefactors, and constitutes one phase in the system of persecutions which has led to the ruin of the Poggiolis.

Wherefore the Italian Commissioner insists that there was an implied responsibility on the part of the Government in these events, even if only a part of them were executed by its agents, because all were by them at least suggested or tolerated.

Let us proceed to the specification of these damages:

1. Burning of house and stores at St. Rafael (fascicle 19, question 2), valued at 4,000 bolivars.

2. Renewed destruction by fire of the same buildings (fascicle 19, question 3), valued at 4,875 bolivars.

3. Burning of 10 hectares of sugar cane ready for the mill (it would scarcely have burned green; fascicle 19, question 4). The sum of 1,600 bolivars claimed for this loss represents the cost of planting and cultivating the cane, which would have produced for ten years or more with ordinary attention.

4. Loss of sugar from the cane for the first year, 1893 (fascicle 19, question 3), 12,000 bolivars.

5. Loss, by destruction, of coffee and banana plantations on the St. Emigdio property (fascicle 19, question 6), which occasioned a damage estimated at 12,800 bolivars.

6. Destruction of a coffee-cleaning mill on the same property (fascicle 19, question 6), 500 bolivars.

7. Destruction of 5,000 banana trees on the Miraflores property (fascicle 19, question 7), 800 bolivars.

8. Burning of a house, by a Government official, on the Pescado property (fascicle 19, question 8), 1,000 bolivars.

9. Destruction, by Government officials, of two coffee-cleaning mills on same property (fascicle 19, question 9), 7,200 bolivars.

10. Killing and maiming of animals on San Emigdio place (fascicle 19, question 10), 1,728 bolivars.

The total of clearly established damages, which have been moderately appraised by Messrs. Poggioli, therefore amounts to 176,703 bolivars, and this loss, occasioned either by the direct acts of the authorities or by the connivance or apathy of the same, should be indemnified.

Let us now consider the damages coming under item 2, referred to in the beginning of this opinion, i. e., the unwarranted closure of the port of Buena Vista, a measure easily understood and accounted for by the animosity displayed against the brothers Poggioli, as seen in documents contained in fascicle 35.

The authorities attempted to attenuate the arbitrariness of this measure by declaring the port closed through reasons of public order and to prevent the revolutionists from procuring arms and munitions of war. But that this was a mere pretext is demonstrated by the fact that at the same time the port of La Dificultad, 1,200 meters away, was permitted to remain open, though just as liable to be used for contraband purposes as the other.

At No. 13 of fascicle 2 it is shown that during the first year of the closure the damages resulting therefrom to the brothers amounted to 24,000 bolivars, that port serving not only their purposes, but being used likewise by a number of importers and exporters of Monte Carmelo and surrounding neighborhood, for the exchange of produce with Maracaibo, by paying the appropriate duties. It is true that some three months after the closure the port was reopened, but this reparation was too tardy to be of avail so far as the Poggioli interests were concerned, either became the port buildings and bridges leading thereto had been destroyed, or because the Poggiolis could not, menaced and persecuted as they had been, return and restore these things to working order with neither money nor credit. And inasmuch as their enforced absence from Monte Carmelo lasted three years, it seems to the Italian Commissioner that the indemnity under this head should be at the rate of 24,000 bolivars per year, or 72,000 bolivars.

We come now to the third class of damages. From all the papers in the case it appears that General Ferrer instituted against the claimants an absurd suit for alleged introduction of arms for the revolutionists. Before the beginning of the suit they were thrown into prison, having been taken from Monte Carmelo to Valera, where they remained from April 29 to June 9, 1892, just at the time when coffee was to be gathered. Both brothers were subsequently again imprisoned, Silvio for fifteen days from September 26 of the same year and Americo for five days in January, 1893.

All these details, as well as the declaration of the superior court of Trujillo establishing the innocence of the brothers, appear from the documents of the claim. In fascicle 15 the court of first instance, referring to the imprisonment and trial of the claimants, acknowledges as "fully demonstrated the injustice and political passion of the usurpers of the public powers (and these could have been none others than the magistrates and agents of the legal Government) against the said Italian subjects, the Poggioli brothers."

The persecutions of the claimants were so varied and numerous and so long continued that we can not but regard them as proving the

existence of a plot well organized and of long standing, prosecuted with a most diabolical malignity and with the connivance of the Government, which thus failed in its principal duties.

The undersigned therefore concludes that the indemnity of 100,000 bolivars asked on account of illegal and arbitrary imprisonments, threats, etc., given the position of the claimants and the importance of their commercial affairs, can not be considered excessive.

The fourth class of losses is the most consequential; from it has come, as an immediate and direct consequence, the utter ruin of the claimants.

The proofs of daily prosecutions suffered by them either from public officials or with their connivance, appear clearly and indisputably from the papers in the case.

In 1891 Silvio was seriously wounded by Rudecindo Hernandez, in complicity with Carlos Solarte, Rafael María Trejo, and Faustino Suares, and remains a cripple for life.

The perpetrators were put on trial, and when it appeared they would be convicted they were arbitrarily discharged by General Ferrer, while the records of the case were caused to disappear. Afterwards they went about Monte Carmelo for years, terrorizing the inhabitants or inciting them against the Poggiolis, burning and destroying the property of the latter, while the authorities remained impassive, notwithstanding the denunciations of the dependents of the claimants, and the orders from the minister of the interior, Felice Azevedo, at Caracas, dated July 27, 1893, to punish the malefactors, and institute a trial for the disappearance of the records. This order remained a dead letter, and the central Government took no further heed of the matter. In fact, the proceedings were never reversed, and the four criminals are living at liberty in the neighborhood of Mérida.

In 1899 Americo was barbarously murdered, and among the suspects of this crime figures Carlos Solarte.

In 1892 the claimants were subjected to an odious trial, from which they were freed only in 1893, after having been harshly arrested and thrown into prison for a long time; 95 mules, used by them in their business, were requisitioned, as were likewise 100 steers; they were robbed of merchandise at San José de Palmira and on the road to Arapuey from Monte Carmelo; their houses, etc., at the port of Buena Vista, another essential element of their business, were destroyed by fire. The bridges leading to the port were ruined, and the port closed, though afterwards reopened when it had become impossible for the Poggiolis to use it.

Twice were the stores at St. Rafael burned, and plantations of cane in the same locality ravaged, as were plantations of coffee and bananas at San Emigdio and Miraflores. The coffee-cleaning mills at San Emigdio, Santa María, and Pezcado, and at the latter place another house, shared the same fate, with accompanying inundation.

The authorities either perpetrated these abuses or tolerated them, and even incited not only the banditti, but also the employees of the firm to commit outrages of all sorts on the property, and to refuse the payment of dues and rents, creating a system of most unjust war and persecutions and a situation profoundly immoral and subversive of order, as reported by the minister of the interior, Dr. Gen. José Ramón Nuñez at the session of Congress of March 28, 1895.

In 1892 Silvio Poggioli is again arrested, and Americo twice, in 1893 and 1894.

In 1894 they are again brought to trial, but the reason assigned was so absurd and unjust that General Fernandez ordered the suspension of the trial, thereby committing an act contrary to law but according to justice.

The Poggioli Brothers, threatened, deprived of every safeguard for themselves and families, for their property, were thus obliged to abandon the seat of their business, while their dependents, seeing them thus driven and persecuted, became emboldened to refuse obedience and payment of their just dues, and considered as common property all things belonging to the masters, since they had reason to believe these latter would never return to claim. The few dependents who had remained faithful were in their turn persecuted by the Government for no other reason.

In fascicle 16 the honorable umpire will find, among other things, the sworn statement of Gen. G. B. Araujo, a man whose integrity is recognized throughout Venezuela, from which statement it appears that the object of General Ferrer, the author or instigator of the persecutions showered upon the Poggiolis, was the possession of their property. It is clear that to carry out this scheme he had to resort to all kinds of iniquitous measures, some of which it is impossible to specifically prove.

The credit for which the claimants had labored and upon which they had counted was and still remains utterly lost.

In January, 1894, Americo attempts to return to Monte Carmelo, in order to resume the management of his affairs, but is arrested. Silvio betakes himself to Palmira the same year, but being again threatened, gathers together a few faithful dependents and tries to flee from an ambuscade in which he is fired upon and his life attempted, and this with the connivance of the authorities.

By a letter of February 4, 1894, the president of the State of Los Andes (see fascicle 18) acknowledges that the Messrs. Poggioli, by reason of the persecutions to which they are exposed, are unable to establish themselves in the parish of Monte Carmelo, and in a letter of February 13, 1894, Gen. Antonio María Rincón, chief of the district of Escuque, states to the jefe civil of Monte Carmelo that when Americo Poggioli returned on two occasions to said locality to look after the interests of the firm and ascertain what measures had been taken against the four bandits above named, he was arrested, and testifies that the denunciations of Poggioli were well founded.

Finally, by letter of November 5, 1894, that appears in fascicle 21, Gen. Luis F. Carrasquero, jefe civil at that time of the district of Escuque, acknowledges and testifies to the long series of vexations and persecutions suffered by the claimants, and offers them the necessary guaranties to enable them to return to their homes. The same officer, by letter of the following day, informs the jefe civil of Monte Carmelo that the Poggiolis will return to the direction of their business through guaranties finally obtained from the president of the state, and gives orders that there be no repetition of the occurrence which took place in October of that same year, to wit, the requisitioning of a train of eight mules by an armed guard of the Government.

Fascicle 36 contains the proof furnished by the Venezuelan minister of the interior that up to the end of 1895, though for years the

"Legalista" revolution had been triumphant, there was no security in the state for persons or property, and for this condition of affairs the Government was and is responsible.

This fully accounts for the Poggiolis being compelled to leave their several properties, their interests, and their business up to the end of the year 1894. At that time their persecutions finally ceased, after having lasted since 1891, and having been most severe in 1892, 1893, and 1894.

What has been the direct and necessary consequence of all this, if not the entire ruin of the family?

The Poggioli Brothers had, as appears from the partnership contract of March 4, 1892, at that time a liability of 1,162,729 bolivars, exclusive of the 72,000 bolivars which they owed to Manuela Rosales de Poggioli, wife of Silvio (see fascicle 7). It is shown at fascicle 2 that they were paying an interest of between 12 and 15 per cent per year—that is, about 157,000 bolivars each year.

During the three years of the abandonment of their factories they lost, in the first 6,000 quintals of coffee, and in the other two 4,000 quintals each, and these latter do not represent more than half the average production of their haciendas in Monte Carmelo. This is an extremely moderate estimate, since the actual loss exceeds half the average yield per year, the price of which then was 72 bolivars per quintal, as shown in fascicles 2, 28, and 32. The total actual loss is stated at 1,008,000 bolivars.

The burning of the port of Buena Vista and the compulsory removal of the Poggiolis was injurious to them from another point of view, in that it prevented the opportune shipment of various quantities of coffee stored in Monte Carmelo, in San José de Palmira, and in San Cristóbal de Piñango, and the merchandise was spoiled in consequence. The loss under this item is estimated at 78,400 bolivars.

The plantations having suffered an almost total abandonment for four years (since neither the Poggiolis nor anyone else, whether native or foreigner would have dared to care for them, as by so doing they would have incurred persecution from the authorities of Monte Carmelo), became, from fruitful fields, a wilderness of noxious weeds, and it seems just that such an injury should be compensated. For this item the sum of 100,000 bolivars is claimed.

The greatest of all their disasters, however, was the inevitable loss of their credit as the direct consequence of the above-named facts. In their character of industrious, intelligent, and wealthy inhabitants, they enjoyed, before the beginning of the persecutions mentioned, a credit of considerable proportions, but subsequent to these they were unable to meet their liabilities, either principal or interest, from 1892 to 1894. Those who had reposed in them a well-merited faith now seeing them become the objects of daily attacks, hindered in different ways from exercising their industries and enjoying the fruits of their labors and fearing that this odious condition would be prolonged indefinitely, and result finally in the loss of every opportunity to recover their capital, closed their coffers to the claimants, and within only three months of the time when they were enabled to resume operations, compelled them to give up everything, their property passing into the hands of an administration which controls it to this day for the benefit of the creditors.

Had the Poggiolis on the contrary been permitted to work their property during those three years when coffee was selling in Monte Carmelo at 72 bolivars per quintal, they would have been able to meet their liabilities, instead of which they have to-day only a property encumbered by the same debts which burdened it in 1892, and by interest at 5 per cent which it has not been possible to pay, because coffee has fallen as low as 20 bolivars per quintal at Monte Carmelo, while the cost of production is 15 bolivars per quintal.

It is not urged that the ruin of the claimants is due to this fall in the price of coffee. They would have borne this without great difficulty had it not been that their property was mortgaged to the extent of 1,200,000 bolivars, undiminished at the beginning of 1895, and increased by the interest due on an additional sum of 150,000 for the years 1892, 1893, and 1894, solely because during said three years they could not harvest their coffee, which was then bringing remunerative prices, as already mentioned.

The Poggiolis are not as yet bankrupt because the contract for the management of their property was made for ten years from 1895 when the coffee was still fairly remunerative, but at the close of this contract, unless the indemnity awarded them by the umpire is such as to enable them to meet their obligations, they will be utterly ruined.

These exemplary settlers, who, by their energy, opened a large territory to cultivation, established a port, canalized a stream, erected mills, populated a semi-deserted region, are, by the hostility of the Government and its agents, to whom patriotism, common sense, and justice should have suggested the opposite course, driven to the verge of beggary.

The Government is clearly responsible for their financial disaster, brought about by the loss of credit (that most cherished possession of the merchant), the fatal consequences of which have been summed up in the foregoing, and for which they claim an indemnity of 1,000,000 bolivars. This sum does not appear excessive when it is considered that it includes the stipend of 144,000 bolivars for the managers of the Poggioli estate for a period of ten years, and which they were compelled to pay on account of the persecutions inflicted upon them by the agents of the Government.

The liabilities of the claimants, which would have been discharged in 1892, 1893, and 1894, had they been permitted in that period of prosperity to manage their property unmolestedly, amounted, as has been said, to nearly 1,200,000 francs in 1895. With the direct damages suffered by them should be included the interest on the above to date; but the claimants intend to reduce their demand under this item to interest at 5 per cent on 969,015, as appears in the contract of May 7, 1895 (see fascicle 27), the other creditors having accepted partial settlements. It is certain that this accumulated interest, which constitutes one of the causes of the impending ruin of the Poggiolis, would never have been incurred had they been allowed to enjoy the freedom and personal guaranties in the management of their affairs to which they were entitled. Said interest, calculated at 5 per cent as per the contract of 1895, and including all of 1894, would amount to 436,056 bolivars, and this special indemnity is considered due them as well as the others, and for similar reasons.

The last category of damages suffered by the Poggiolis relates to the expenses of the two political trials to which they were subjected

and for the preparation and prosecution of their claim, comprising the cost of Silvio Poggioli's residence in Caracas on two occasions for a considerable period; one from 1893 to 1894, and another at a later period, and also the costs of contract with creditors; in all, estimated at 52,313 bolivars, which is deemed within reason.

The claim of the Poggiolis is equitable from every point of view, and even in the determination of the responsibility of the Government in the events of which they were the sufferers, they have followed rules of moderation and reason. In fact, they make no claim for the wounding of the one and the assassination of the other, notwithstanding these may be considered as the first and last links in the chain of violences and persecutions mentioned in this paper. The responsibility for other maltreatments appears sufficiently established. It needs but to examine the odious animosity displayed by General Ferrer in his dealings with the unfortunate Poggiolis, in which he took the initiative and set the sad example of the vexations suffered by them.

The honorable umpire should consider the autograph letter of that officer in fascicle 37, in which he orders the destruction of 2,000 coffee trees belonging to one Felice Terán, solely because he had refused the General a loan, rendered impossible by reason of serious illness. See also a letter by him addressed to the jefe civil y militar of Monte Carmelo, of April 28, 1892, in which he orders the capture of the Poggiolis, and the seizure of all their mules and cattle without regard to any jurisdiction or respect for any law but that of his own will, justifying his odious procedure by referring to the refusal of the Poggiolis in the exercise of their right as foreigners to furnish 40 mules on an arbitrary requisition of that officer, as a proof that they were themselves revolutionists and enemies of the Government. In that letter reference is made to verbal instructions mysteriously transmitted to General Briceño. What these instructions were subsequent events adequately demonstrate.

General Ferrer was at that time invested by the Government with supreme authority in the State of Los Andes, in Barquisimeto and Zulia. If this was the conduct of one who should have been the best guarantee of the rights and liberty of the inhabitants what could logically be expected of the subordinate authorities?

It appears, besides, from documents in fascicle 35, that Generals Vásquez and Briceño, who were filling important positions in the State of Los Andes at the time of Ferrer's administration, were likewise enemies of the Poggioli brothers.

Is it admisible that he who is intrusted with the delicate and important duties of a public functionary should suffer his actions to be controlled by his sympathies or animosities?

This sufficiently explains how the persecutions and arbitrary treatment which precipitated the claimants from the height of their commercial prosperity to the condition of actual ruin lasted so long and took so many divers forms.

The "giustificativo" and counterproof submitted by the Government to this Commission on March 12, 1904, can not overcome the full and complete documentation submitted by the claimants. As a matter of fact, it was prepared in the absence of Silvio Poggioli and on the basis of declarations of persons notoriously inimical to the claimant family. The facts therein alleged are effectively contradicted

by the memorial presented to the royal Italian legation by the claimant on the 22d of April, 1904.

The honorable Venezuelan Commissioner alleges that many of the damages suffered by them were the outcome of private feuds engendered by their conduct toward certain of their creditors, whose property they had seized in satisfaction of debts under harsh foreclosures, and in support of this opinion he cites the case of Rudecindo Hernandez, who wounded Silvio Poggioli and who lost five haciendas by the latter seizing them in satisfaction for a few loads of coffee.

Upon an examination of the circumstances attending this affair it appears that Hernandez, in 1885, was indebted to the Poggiolis for 154 loads of coffee to the value of 15,800 bolivars, plus 11,367.78 bolivars in money. They awaited in vain for the settlement of the account to October, 1890, and on the 23d of that month an agreement was drawn up by mutual accord and recorded the 1st of December of the same year, by which 23,280 bolivars was acknowledged as due the Poggiolis, who granted the debtor delays in the payment of said amount in coffee and money.

The first payment fell due in February, 1891, with the condition that if payment was not then made the creditors would be authorized to seize the property held as security therefor. Hernandez did not meet his obligation in February, and on the 28th of May he fired upon and wounded Silvio Poggioli at night, in the plaza of Monte Carmelo, perhaps as a means of avoiding the fulfillment of the clauses of his contract. After this, Poggioli had no further hope of securing payment of the debt, and could not in reason be expected to show friendliness or regard toward Hernandez. In October of that year he obtained judgment from competent authority, and by a decree which explains and justifies the attitude then taken by the claimant secured possession of the property of the debtor.

Whatever of odiousness there was in this transaction can not certainly be attributed to Poggioli, who used his right only after daily proof of forebearance and after a delay of years in its exercise. It will be noted further that at this time Hernandez was in jail for the wounding of Poggioli, and but for the arbitrary intervention of Ferrer would probably have remained there some years, leaving in abandonment the property held as security for the payment of his debts.

In conclusion, the Italian Commissioner asks that the present claim be recognized in the total sum of 3,023,472 bolivars, which, unless the undersigned has erred in his calculations, is the amount asked by the claimants, of which sum, Silvio Poggioli's share is 1,955,033 bolivars, or 65.99 per cent of the whole, while the share of the heirs of Americo Poggioli is 1,028,439 bolivars. Should the honorable umpire not recognize the latter as entitled to claim before this Commission, it is asked that his decision against them be without prejudice to their rights in the manner employed by him in former cases.

ZULOAGA, *Commissioner:*

Silvio and Americo Poggioli, Italians, domiciled in Monte Carmelo, Escuque District, State of Los Andes, were associated under the firm name of Poggioli Hermanos from 1885 to 1895, and dealt in coffee and cultivated it, whereby they constantly acquired new properties. Poggioli Hermanos were very much disliked in the neighborhood, so much so that on May 28, 1891, an attempt was made to kill Silvio,

who was wounded by a shot fired from ambush. The deed was charged against Rudecindo Hernandez, Rafael Trejo, Carlos Solarte, and Faustino Sanches (the first of those named had sold a plantation to the Poggiolis). Process was instituted against these persons, but they escaped from the jail of Trujillo during a revolution; no action was taken and the suit was dropped. In 1892 a terrific civil war broke out in Venezuela, and the State of Los Andes, together with the government there, supported it. The Government at Caracas sent Gen. D. B. Ferrer against the government of Los Andes. When he arrived there the Poggiolis were denounced to him as revolutionists and the possessors of firearms, and Ferrer having demanded of them a certain number of animals and cattle for the army they refused to deliver them. Ferrer took the animals and cattle and put the Poggiolis in prison, ordering that they be tried, as appears from the order of April 28, addressed to the civil and military chief of Monte Carmelo, which reads as follows:

The refusal of the Poggiolis to deliver over the 40 mules which I have demanded of them, and other reasons which you will verify with General Briceño in a judicial manner, gives rise to the presumption that they are revolutionists and enemies of the National Government, and to this end, and in order to prove them such, you shall follow the verbal instructions which I have given Briceño, who will bear the original of what I communicate.

The Poggiolis were released by Ferrer himself, but later, on June 6 of the same year, the judge of the first instance ordered that they be taken prisoners in order that the suit pending against them might proceed; and they were imprisoned on September 26 of said year, and sent to Valera, but later set at liberty. The Caracas Government, in whose service Ferrer was, having been defeated and the revolution having triumphed in Los Andes, the tribunal constituted thereby, on February 7, 1893, dismissed the suit against the Poggiolis, declaring that in said action could be discerned the political passion of the partisans of the Government which Ferrer served. This judgment was confirmed by the court.

The Poggiolis having returned to their home, they were again antagonized by their numerous private enemies. Private individuals burned down small properties of the Poggiolis, they cut down some plantations of bananas (5,000 trees), they killed a saddle horse and 3 head of cattle, and at the time when Silvio was going to take charge of certain plantations, certain unknown persons discharged firearms on him from ambush. Some witnesses state that public opinion attributed it to persons who were delinquent with respect to payment of mortgages on certain coffee plantations which did not belong to the Poggiolis. In a letter from Poggioli to Ferrer it is said that Garceliano Usma and Santos Rivero had taken possession of the real estate of which in due form they had transferred title to him.

In the year 1891 the affairs of the Poggiolis prospered, but they had made free use of credit and owed more than 1,000,000 bolivars, and they paid thereon an interest of from 1 to 1¼ per cent monthly. The Poggiolis from 1892 had found themselves in commercial difficulties, and this state grew worse until in 1895 they were forced to deliver their property to their creditors. The Poggiolis ascribe this situation solely to the persecutions suffered. They say that in 1892 during the days they were imprisoned in May and June they lost three-fourths of their crops which they could not harvest; that they lost as estimated 4,500 quintals of coffee in the Escuque District in Trujillo and 750 loads

in the Miranda District, in Mérida; that they suffered other losses because coastwise trade was forbidden in the port of Buena Vista, on Lake Maracaibo, etc. It appears, however, that the loss of the coffee crop, if there was any, did not fall alone on the Poggiolis, since L. F. Carrasquero says, in answer to the eighth interrogatory (record 2, p. 9), that the crop was lost *not only by the Poggiolis but by all the farmers of that district.* The coffee crops (in so far as they were not gathered, but according to the evidence submitted at that time—the time of the imprisonment—they were already harvested), were lost, no doubt because not only the government of the State which was in the revolution but also the general in campaign from Caracas recruited soldiers, and men who were not in the army, fled and hid themselves, workmen therefore being scarce. The imprisonment of the Poggiolis could not materially influence the harvest of the coffee. The plantations, no doubt, had their foremen or overseers and they could carry it out.

The Poggiolis, in their complaint to the minister of Italy, charge a large portion of these persecutions to the parish authorities who were their personal enemies, "who owned real estate and commercial houses in the district where the Poggiolis were residing and to whom their absence was very advantageous." Witnesses testify that the authorities of the town provoked uprisings against the Poggiolis, in order that they should not deal with the latter and should sell to Cheuco Brothers, Terán & Moreno, etc. The Poggiolis appear to have complained to the higher authorities and the latter took steps, in October, 1894, against these acts counteracting the measures of the local authorities. The civil chief of the district, L. F. Carrasquero, gave orders to the local authorities and in a letter of November 5, 1894, said to the Poggiolis: "Considering the great number of unjust damages, injuries, and persecutions that had already occurred, principally because of an avaricious spirit of mercantile rivalry, taking advantage of the political advantages in order the better to injure their interests, etc.," it was pleasing to him to offer, in the name of the president of the State, the amplest protection. Said Carrasquero, as appears from the evidence, was a great friend of the Poggiolis and is still their attorney in many matters. Some years later (the date does not appear precisely) Americo Poggioli was assassinated by an unknown person, and Silvio charges his death to his long-standing private enemies.

The cause of these deep hatreds toward the Poggiolis and of the *private* violences which followed upon them, is easily discerned in the documents submitted in support of the case. The Poggiolis had rapidly become rich, and had obtained a large part of the coffee plantations in the neighborhood where they had located themselves, notwithstanding that they labored under a heavy indebtedness, for which they paid dearly, since they paid interest at from 1 to 1½ per cent per month. Under these circumstances it is not natural that they should prosper greatly in their farming business, which does not in itself make large returns; but the Poggiolis were very overbearing and oppressive to the small farmers of the locality, an ignorant and candid people, with whom they entered into extremely advantageous contracts, which allowed them to acquire these properties at an extremely low price.

The contract for sale with the right of repurchase is very common in Venezuela for the purpose of borrowing money as a loan, with security, and although the purchaser may retain possession of the

property, if after the term of repurchase has elapsed the vendor does not repurchase it, this being regarded as usurious is rarely done. Therefore the buyer gives repeated extensions to the vendor or debtor. The Poggiolis did not act thus, and conforming with the original clause of limitation of time for repurchase, they imposed new and additional obligations upon the debtor. In the titles accompanied by the claim for destruction, incendiarism and destruction, it is seen in that passed by Rudecindo Hernandez that the latter was paying to the Poggiolis 25 loads of coffee in annual installments, of which the first 25 loads of coffee had to be be delivered in February, 1891. Because this first 25 loads of coffee were not delivered the Poggiolis took possession of the property called "San Rafael," planted with sugar cane, together with the sugar mill, buildings, improvements, and pastures; of the coffee property "San Emigdio," of the ranch "Miraflores," planted with bananas; of another plantation of coffee and small fruits, the house and mill; and of another coffee plantation, a dwelling house, and plowed field.

The Poggiolis obtained all this from Rudecindo Hernandez under enforced execution because he had not paid them 25 loads of coffee. Hernandez believed himself wrongfully dispossessed.

Likewise the deeds of sale with the privilege of repurchase are found from Rafael Rivera to his ranch "Santa María" planted in coffee and small fruit with a water-power mill for the treatment of coffee, a tile oven, etc. The price of the conditional sale was 5,506 bolivars to be paid in March, 1888, and thirteen and one-half loads of coffee; and in the same month of other years following the same amount (neither the price nor the quality of coffee to be delivered are fixed). The Poggiolis took possession of the estate in 1887 for default in payment of *part* of the first installment—about 400 bolivars. There is also in evidence the deed by virtue of which Francisco Antonio Gonzales sold the Poggiolis with the privilege of repurchase his plantation of coffee and bananas, dwelling house, grinding mill for coffee, etc., for 7,840 bolivars. This amount Gonzales was to return to them by delivering 20 loads of coffee each year. The contract was executed in 1891. In 1892 Gonzales did not pay the first installment and the Poggiolis took the ranch. These were the sort of negotiations which the Poggiolis were carrying on in Monte Carmelo, as appears from the few deeds which have been produced. These plantations were, as is said, cut down or burned by unknown parties. It is not difficult to imagine the motives.

The facts which give rise to the Poggioli claim are as follows: First. Wrongful imprisonment by Ferrer in 1892, and subsequently the process which he instituted against them. Second. Indirect damages caused by this imprisonment, such as the loss of crops and loss of credit. Third. Direct damages for the confiscation by General Ferrer of 95 mules and 100 head of cattle and the confiscation of merchandise in the village of Palmira. Fourth. Indirect damages because of the closing of the coastwise port of Buena Vista by order of the civil and military chief of the State of Trujillo, whereby they believe they suffered in their credit. Fifth. Damages for local antagonism after 1892 until 1895.

First. The imprisonment which Ferrer ordered is justified by the denunciation which the Poggiolis themselves declare their enemies made to said general, of being enemies of the government of Caracas,

a denunciation which was corroborated by the refusal to deliver him mules. Ferrer immediately compelled the proper trial to be instituted, and the subsequent imprisonment of the Poggiolis by virtue of the decree of the judge until the action was discontinued is perfectly lawful and can not give rise to any claim.

Second. The indirect damages which the Poggiolis may have suffered by reason of the imprisonment, even in case they were proved. could not be recovered, in the first place, because the imprisonment was justified, and, in the second place, because the Commission, in accordance with the fixed rule always followed by the Commissioners and umpire, does not allow indirect damages (see case of Giacopini decided by the umpire, p. 765), and in the matter of loss of crops in other commissions the point has been decided against the claimants. It is not certain, moreover, that the losses of the Poggiolis were caused by their imprisonment but by the misfortunes which in general wars bring, such as the scarcity of workmen, the difficulty of transportation, limitation of credit, etc.

Third. It appears that the Poggiolis suffered losses because General Ferrer took from them 95 mules, valued at 49,400 bolivars, and 100 head of cattle, valued at 20,000 bolivars; because of merchandise taken by the forces of General Ferrer at San José de Palmira, about 32,000. The half of these three amounts, or say 50,700 bolivars, belong to Silvio Poggioli, and I agree that it is owed by the Government of Venezuela. The other half belongs to the widow and son of Americo Poggioli, who are Venezulans, and it can not be awarded by this Commission.

Fourth. The indirect damages claimed because the Government closed the port of Buena Vista. In the first place, it is not true that they exist, since the witnesses attribute the damages, not to the closing of the port, but especially to the lack of means of transportation; but even supposing that they might exist, they would not be recoverable, because beyond all doubt it is the right of the authorities to close a way of communication because it believed it expedient for military operations.

Fifth. Damages because of local antagonism from 1892 to 1895. The acts charged to the local authorities are not substantiated. The burning and devastation of some properties, which are the same ones that the Poggiolis so cruelly wrested from Rudecindo Hernandez, appear to be charged by the witnesses to this latter individual and to others who had escaped from prison and had succeeded in freeing themselves from a voluminous process which the judge of the first instance of Trujillo had instituted against them. No concrete determined damage can be found or ascertained. The bases of this item of the claim are the same as in the case of Victor de Zeo[a] and ought therefore to be disallowed for the same reasons as those expressed by the honorable umpire.

The coffee crop, even in the cold regions, is not gathered after January.

The instrument of 1891, in which the association of the Poggiolis appears, is not executed before the commercial judge; nevertheless if it be examined it will be seen that the real estate was not large.

The Poggioli claim amounts, for losses of the crops of certain plantations and other agreements of a temporary nature, to more than

[a] See p. 693.

double the whole of their capital. Naturally this capital is exaggerated, and the damages are not asked except for the loss of the *products* of the capital.

The true cause of the losses of the Poggiolis in their interests is to be found in their immense debts, on which they were paying high interest, in the general depression in the time of war, and in the falling of the price of coffee during all these years.

This claim was presented to the Italian legation in 1892, and the claim ended, since the legation did not take any account of it, and therefore it is not admissible.

In the case of Giacopini[a] the honorable umpire disallowed indirect damages very similar to those of the Poggiolis.

I maintain that the loss of the Poggiolis is not a direct damage of the Government.

RALSTON, *Umpire:*

The above-entitled claim for 3,419,223.28 bolivars is referred to the umpire on difference of opinion between the honorable Commissioners for Italy and Venezuela.

Silvio and Americo Poggioli, natives and subjects of Italy, were domiciled in Venezuela long prior to 1892, the period when the larger share of the losses for which claim is made, was experienced. They had been in partnership for many years in the cultivation and sale of agricultural products, being, besides, the owners of considerable mercantile establishments at several points.

In the spring of 1892 the Legalista revolution broke out in the State of Los Andes, and early in its career, on the 26th of April, 1892, General Ferrer, who was the governmental chief in charge of the headquarters at Valera, demanded from the brothers a certain number of mules, which were not furnished, Americo insisting that they were no longer the property of the Poggiolis, but by contract belonged to another firm. He was given three days in which to produce them, at the end of which time, the mules not appearing and the Poggiolis being in Monte Carmelo, about 10 leagues away, some 85 soldiers were sent to that point, and they were put under arrest, retained there for a few days and afterwards transported elsewhere, remaining prisoners for forty-two days, when they were set at liberty.

About the time of their arrest a charge was instituted against them, at the instigation of the highest military officials, of having imported arms and ammunition intended for the use of the revolutionists, and witnesses were, according to the testimony, by subornation, threats, and promises, made to appear to sustain it. This charge, however, after being fully investigated by the court of first instance, was found to be without foundation, both by that court and its superior court.

About the time of the imprisonment of the Poggiolis there were taken from them 95 mules and 100 cattle, of the entire value of 69,400 bolivars.

After the release of the Poggiolis they went to Mendoza to recover their health, which had been injured by imprisonment, but before they were completely restored Silvio was again, in the following month of September, arrested, being kept in confinement this time some fifteen days, when he was released.

---

[a] Page 765.

The arrest of the Poggiolis was the signal for the destruction of their extensive properties, since we find that by government authorities their sugar mill and house at San Rafael were at once destroyed, with a loss of 4,000 bolivars. Being reconstructed, they were again burned and robberies committed, the additional loss being 4,875 bolivars. Heavy losses at San Antonio, San Rafael, San Emigdio, Los Ranchos, and Miraflores were attributed to an understanding between the criminals hereinafter referred to and the authorities, whereby was established a plan with fire and machete to devastate the properties. Ten hectares of sugar cane were destroyed, which, had it been harvested, would have yielded 12,000 bolivars. At San Emigdio there were destroyed coffee and a coffee mill of a total value of 6,900 bolivars. At Miraflores were destroyed banana trees, capable of producing to the value of 800 bolivars. At El Pescado a house worth 1,000 bolivars was burned by Juan Torres, agent of the government and commissary of the Caserío Cristóbal. At Santa María and El Pescado, coffee mills worked by water, and worth 7,200 bolivars, were destroyed by agents of the government. When the employees of the Poggioli brothers complained to the authorities of the parish, some were recruited in the army and others expelled. At Emigdio 3 cattle were killed and a horse injured, at a total loss of 1,728 bolivars. The authorities at Monte Carmelo took and destroyed property to the value of 48,500 bolivars.

It is further stated circumstantially that high government officials convoked the agents and debtors of the Poggiolis, threatening them with all sorts of injuries unless they should give up their management of the properties of the brothers and refuse to pay their debts to them, and in many cases those who continued their friendship were finally driven off by violence. As incidental to the dispersal of their agents, and their own enforced absence, the Poggiolis claim to have lost, but without giving satisfactory details, 100,000 bolivars through neglect of their properties.

While the Poggiolis were prisoners, they had at Monte Carmelo 600 loads of coffee ready for shipment; at San José de Palmira 725 loads, and at San Cristóbal de Piñango 250 cargoes, but the port of Buena Vista was closed and exportation there and at the port of La Dificultad prevented, with a consequent loss of 24,000 bolivars.

Packages of merchandise on the road from Arapuey to Monte Carmelo, valued at 4,800 bolivars, were taken by the government troops.

The agents of the civil government, under General Vásques, burned the bodega at Buena Vista and other houses; the total loss of materials and labor at that point amounting to 24,000 bolivars.

The mercantile establishment of the brothers at San José de Palmira, containing a large quantity of merchandise, was completely sacked, and coffee destroyed of a total value of not less than 32,000 bolivars.

The preceding year B. Hernandez, C. Solarte, R. H. Trejo, and F. Suares had attempted the life of Silvio Poggioli, and in consequence were arrested and found guilty. They nevertheless were allowed to enter the army, while the expediente showing their guilt disappeared. The Poggioli brothers repeatedly called the attention of the superior authorities of the state, commencing at least as early as May 12, 1892, to this condition of affairs, insisting that these men should be rearrested, but in vain. So far from being retaken, they seemed to have

received the tacit protection of the authorities at Monte Carmelo, who would warn them when there was danger of their being disturbed, and who with other officials joined with them in the larger part of the various offenses committed against the Poggiolis, this continuing to be the case until 1895, when the Poggiolis were at last, after repeated efforts, finally assured of a proper administration of justice; competent and reliable authorities at Monte Carmelo replacing those against whom the Poggiolis had protested, even to the secretary of the interior of Venezuela.

Until the last of 1894 the Poggiolis were unable to return to their home at Monte Carmelo because of the events narrated, one effort resulting in the attempted assassination of Silvio, and their properties therefore being meanwhile utterly neglected.

That the general condition in Los Andes was bad and a reign of anarchy existed we may readily believe, from the fact that on March 27, 1895, the minister of interior affairs at Caracas refused to favor calling elections because the State of Los Andes was "an eternal slaughterhouse," and laws protecting life and property were for the time being nonexistent. Another index of the local conditions is afforded in the fact that the officials of Monte Carmelo were changed seven times between April, 1892, and September, 1893.

As late as 1894 the Poggiolis were again called upon to defend themselves against an unfounded charge of introduction of arms, but this claim was quickly disposed of by the intervention of the superior authorities, although for the time being it subjected them to inconvenience and trouble.

They were compelled to expend in defending themselves from the various false charges 7,615.34 pesos, and they further expended to send Silvio Poggioli to Caracas to advance their claim the additional amount of 3,407 pesos.

As the result of all the acts herein set forth, the Poggiolis fell into a state of bankruptcy.

As early as June, 1893, Silvio Poggioli presented to the Venezuelan Government an account of the damages and injuries to which he and his brother had up to that date been subjected, and as a consequence on June 27, 1903, the secretary of the interior wrote to the President of Los Andes, ordering that the criminals be immediately imprisoned and an inquiry had as to the authors of the suppression of the expediente against them, in order to punish them severely. This was regularly transmitted to the authorities of Monte Carmelo, who filed it away without attention.

The foregoing is not a complete statement of the offenses and annoyances to which the Poggiolis were subjected, but gives a sufficient and at the same time concise account of their most grievous troubles.

It is urged, by way of excuse or defense, that the Poggiolis were usurers and had entrapped their neighbors into many contracts extremely disadvantageous to them, and that all of the difficulties to which they were subjected were to be attributed to personal animosities born of their conduct rather than to the acts of officials for which the government should be liable, and, supporting this, it is said that Henandez himself lost his property because of an unfair contract executed by him at the instance of the Poggiolis, which they rigidly enforced, and that his activity in the various offenses committed against them was to be attributed to personal enmity. In addition, it is to be

noted that General Francisco Vásquez, civil and military chief of the Trujillo section of the State of Los Andes, and Gen. Gabriel Briceño, who took part against the Poggiolis, were personal enemies of theirs before the war, while in the letter of Carrasquero, chief of the district of El Pescado in November, 1894, promising protection to the Poggiolis, their difficulties were spoken of as arising from commercial rivalries.

Again, some of their troubles with relation to loss of coffee sent by them to the port of La Dificultad for exportation seem to have relation to the fact that they refused to pay taxes thereon, which had been ordered, apparently illegally, by district councils.

These excuses are not, however, of a character to affect liability if it otherwise existed.

Since the events of which we speak, Americo Poggioli has died, having in fact been killed by a musket ball fired by one of the garrison stationed at Valera, and, it is suggested, by Solarte, one of the criminals who had assaulted Silvio Poggioli in the year 1901, and who had escaped confinement, practically receiving in fact Government protection. However this may be, the claim of Americo Poggioli died with him, so far as this Commission is concerned, as his only heirs consist of his widow and children, all of whom are Venezuelans by birth. The claim of his heirs is therefore Venezuelan, under the rules heretofore adopted by the umpire, particularly in the Brignone and Miliani cases.[a]

As a preliminary question, it is suggested that all the Italian claims originating because of the acts of the revolution in 1892, were settled by an arrangement entered into between the Italian minister accredited to Venezuela and the Venezuelan Government, and some language contained in the expediente of the correspondence and negotiations between the two parties gives color to this opinion; for instance, a private letter from Count Magliano de Villar San Marco, the Italian minister, speaks of giving a definite solution to all the Italian reclamations arising from the revolution of 1892. An examination of the papers, however, fails to show that the Poggioli claim was ever taken into consideration between the two Governments, so far as the settlement in question is concerned, although it is manifest from the expediente under present consideration that during practically all the period when Italian claims were being adjusted, this claim was being urged by the Italian legation, receiving attention from the Venezuelan Government down to 1896.

The umpire is therefore disposed to consider that it was not the intention of the two Governments to determine the claim of the Poggioli Brothers at that time, and he is confirmed in this belief by the fact that the Venezuelan direccion de crédito público, in its letter of March 9, 1895, addressed to the tesorero del servicio público, speaks of the amounts considered under the agreement as for aids (suplementos) to the national revolution, and the account accompanying the letter refers, not to all Italian claims, but to the Italian claims recognized by the junta de crédito público, and similar language is used in further communications of the Venezuelan Government. At a later period, in giving a list of the claims, those then settled are referred to as being for "suplementos" for the national revolution. Again,

[a] See pp. 710 and 754.

attached to a letter from the direccion de crédito público dated July 5, 1895, reference is made to what is entitled "Convención Entre la Legación Italiana y el Ministerio de Hacienda," which contains a résumé of the claims for "suplementos," etc.

Further, the junta, under the law of June 9, 1893, giving it special jurisdiction of claims arising out of the revolution, could scarcely have given an award indemnifying for all or any large portion of the offenses complained of in this case.

Before in detail passing upon the facts before us and the responsibility of the Venezuelan Government incident thereto, it may be worth while to state as nearly as may be some of the general principles to be applied to them.

Not many cases have been presented to international tribunals in which responsibility was claimed for the acts of private individuals, or for trespasses committed by civil authorities. The only cases brought to his attention are recited in the opinion of this umpire in the De Zeo case,[a] and to be found in 3 Moore, pages 3018 and 3032. In one it was claimed that the Government of Mexico had tolerated, and even set on foot, disorders affecting the claimant's business, and the Commission thought that so grave a charge should be maintained by the most unquestionable proof and alleged as a distinct act and ground of reclamation; and in the other (for the seizure of a boy by the governor of a State) relief was refused, because it did not appear that ample redress might not have been obtained by resort to the judicial tribunals of the country.

Had the courts of Mexico been closed to the claimant and justice denied him, that might have constituted a ground for a claim of indemnity against the Government of Mexico. No such case, however, is presented. No appeal was made by the claimant to the courts, and no denial of justice had been proved. Under these circumstances, the board can not regard the Government of Mexico as responsible.

Let us now consider the question from the standpoint of text writers.

Calvo says:

SEC. 1263. Dans l'intérieur des limites juridictionnelles, les agents de l'autorité de toute classe sont personnellement seuls responsables dans la mesure établie par le droit public interne de chaque État. Lorsqu'ils manquent à leurs devoirs, excèdent leurs attributions ou violent la loi, ils créent, selon les circonstances, à ceux dont ils ont lésé les droits un recours légal par les voies administratives ou judiciaires; mais à l'égard des tiers, nationaux ou étrangers, la responsabilité du gouvernement qui les à institués reste purement morale et ne saurait devenir directe et effective qu'en cas de complicité ou de déni de justice manifeste.

Bonfils, in his Manuel de Droit International Public, section 330, says:

Des étrangers, établis ou transitants sur le territoire d'un État, sont lésés à l'intérieur de ce territoire par des fonctionnaires en violation des lois. La responsabilité de pareil acte pèse sur les fonctionnaires qui en sont les auteurs. La partie lésée peut les poursuivre par les voies legales, judiciaires ou administratives. En principe, l'État n'est pas plus responsable vis-à-vis de ces étrangers qu'il ne l'est à l'égard de ses nationaux. Mais si l'acte dommageable était suivi d'un déni de justice; si les tribunaux locaux refusaient d'entendre l'étranger, d'accueillir son action à raison de son extranéité même, l'État qui tolererait une pareille lésion deviendrait responsable du déni de justice, et le souverain de l'étranger pourrait par voie diplomatique demander que réparation soit accordée.

En ce qui concerne les actes réguliers et légaux d'instruction, de juridiction et de répression exercés sur des étrangers, le principe est que l'étranger reste soumis au régime de droit commun qui pèse sur les nationaux eux-mêmes.

---

[a] See p. 693.

After denying that a state is ordinarily responsible for the acts of its subjects, he adds (sec. 330):

Mais le gouvernement doit avoir pris les précautions nécessaires et ordinaires, ne pas laisser ces faits impunis quand il vient à les connaître, ou, si sa législation propre l'y autorise, livrer les coupables à l'État offensé.

Creasy says, page 343:

Apply then to a state the analogous test of whether it has been as diligent to provide itself in its neighbor's behalf with a sufficient system of criminal process as it is diligent in providing itself safeguards against mischief in its own important affairs; and, furthermore, bear in mind that the mere proof of an affirmative in answer to this interrogation would not be a sufficient justification against complaints if it appeared that the inculpated state was habitually and grossly careless and disorderly in the management of its own affairs. But if it appeared that the state in question was civilized, and was reasonably firm and orderly in its self-government, an answer in the affirmative would be sufficient.

Halleck says, ch. 11, sec. 7, that—

The sovereign who refuses to cause a reparation to be made of the damage done by his subject, or to punish the guilty, or, in short, to deliver him up, renders himself in some measure an accomplice in the injury and becomes responsible for it.

Hall says, page 227, fourth edition:

With private persons the connection of the state is still less close. It only concerns itself with their acts to the extent of the general control exercised over everything within its territories for the purpose of carrying out the common objects of government; and it can only therefore be held responsible for such of them as it may reasonably be expected to have knowledge of and to prevent. If the acts done are undisguisedly open or of common notoriety, the state, when they are of sufficient importance, is obviously responsible for not using proper means to repress them; if they are effectually concealed or if, for sufficient reason, the state has failed to repress them, it as obviously becomes responsible, by way of complicity after the act, if its government does not inflict punishment to the extent of its legal powers.

With regard to responsibility for the acts of administrative, official, naval, and military commanders, he holds, page 226, that—

Presumably, therefore, acts done by them are acts sanctioned by the state, and until such acts are disavowed, and until, if they are of sufficient importance, their authors are punished, the state may fairly be supposed to have identified itself with them. Where, consequently, acts or omissions which are productive of injury in reasonable measure to a foreign state or its subjects are committed by persons of the classes mentioned, their government is bound to disavow them, and to inflict punishment and give reparation when necessary.

Again, on page 232, he speaks of the higher degree of responsibility of the state which is "not reasonably well ordered."

Let us first seek to apply generally the principles above enunciated to the facts before us.

It appears that in 1891 an attempt was made upon the life of Silvio Poggioli by four people who were subsequently recruited into the Venezuelan army, and who have to this day escaped punishment, although guilt appears to have been completely established and although repeated requests were made of the higher officials in the state, judicial and administrative, that they be rearrested and subjected to proper punishment for their act. We find that one of these requests was made within two weeks after the wrongful arrest of the Poggiolis, and occasioned by the fact that these criminals were then engaged in ravaging their properties and driving off their employees.

After this demand for relief the criminals still remained at large, with the connivance of the authorities, who seemed to have notified them on at least one occasion of the danger of their arrest, so that they

might temporarily conceal themselves. As late as 1894, notwithstanding express orders given by the Central Government at Caracas, we find the State authorities so blind to their duties that, although they thereafter afforded the Poggiolis the protection they had lacked for two previous years, they failed to make any arrests. It seems to the umpire that under these circumstances the local authorities of Venezuela were derelict in their duty and were guilty of a denial of justice, for justice may as well be denied by administrative authority as by judicial.[a] And it further appears to him that when the authorities of the State of Los Andes have acted in apparent conjunction with criminals, and have with them and under the circumstances heretofore detailed joined in the commission of offenses against private individuals, and no one has been punished therefor and no attempt made to insure punishment, the act has become in a legal sense the act of the government itself. One can not consider that the acts were the acts of a well-ordered state, but rather that for the time being some of the instrumentalities of government had failed to exercise properly their functions, and for this lack the Government of Venezuela must be held responsible. We are the more justified in this conclusion because of the opinion of the minister of interior affairs already quoted, and notwithstanding the undoubtedly correct intentions of the National Government.

Reviewing the authorities, it seems to the umpire that this case differs from those cited from Moore's Arbitrations,[b] in that it is sustained by the clearest proof following distinct allegations, and that there has been in fact a denial of justice by the administrative authorities of the State; that the considerations herein narrated come within the language of Calvo, who finds responsibility "in case of complicity or of manifest denial of justice," for there certainly was complicity on the part of the officials and denial of justice as set out; that the criterion suggested by Bonfils was exactly met by the administrative refusal to grant relief when the local government failed to take ordinary and necessary precautions and allowed the offenses complained of to go unpunished after becoming known; that the State of Los Andes, during the years in question, in the language of Creasy, was "habitually and grossly careless and disorderly in the management of its own affairs;" that by its failure to make reparation or punish the guilty, Venezuela has, through the fault of Los Andes, rendered itself "in some measure an accomplice in the injury" and has become "responsible for it," and that, according to Hall, the acts complained of being "undisguisedly open and of common notoriety" and being of importance, the State "is obviously responsible for not using proper means to repress them," and has not inflicted "punishment to the extent of its legal powers."

The first considerable offense committed against the Poggiolis was their arrest and imprisonment; first, for a period of forty-two days, and second, of Silvio for a period of fifteen days. It is conceivable that such arrests might take place upon misinformation or mistake even of law, and that, honesty at any rate being assumed, no recourse would have remained for the unfortunate victim. In the case under examination, however, it is clearly manifest that the arrests took place pursuant to the order of the general in command, and that they were

[a] 13 Opinions Attorneys-General, p. 547.
[b] Referred to and relied upon in the De Zeo case, p. 693.

merely the result of bad feeling engendered by a very proper refusal on the part of the Poggiolis to surrender without compensation mules and other animals to the use of the Government. In another case[a] the umpire has awarded in favor of men of considerable financial means the sum of 250 bolivars for each day of detention, and the same award may now be made in favor of Silvio Poggioli; that is to say, the sum of 14,250 bolivars.

It is strenuously urged that an allowance should be made for the loss of credit to which the Poggiolis were subjected, but this item is entirely too indefinite and uncertain to be taken into consideration by the umpire.

A large claim is presented because threats of violence were made against agents and debtors unless they should give up their management of the properties of the Poggiolis and refuse to pay their debts to them. For the destruction of the properties involved in this situation, a sufficient award is made, but no award will be made for the refusal to pay the debts; the reason being that the debts might have been collected at a subsequent period, together at least with interest on them, which would measurably at any rate offset the important temporary loss to the Poggiolis. Aside from this, however, the loss is too indirect and uncertain.

Large damages are claimed for the closing of the port of Buena Vista with consequent injury to the commerce of the Poggiolis, and it is argued that the reason given for the closing of the port—that is, that arms were imported there for the use of the revolution—was insufficient, inasmuch as the port of La Dificultad, 1,200 meters distant, still remained open, where the same offense could have been committed, if there were foundation for the charge, and it is urged, therefore, that the port was closed simply as a matter of spite toward the Poggiolis. This may have been the case, but the umpire has nothing whatever to do with the reasons inducing the Government to close the port. The umpire assumes that it was within its police power to close it, and no contract existing between the Poggiolis and the Government (as in the Martini case[b]), by virtue of which damages could be claimed for the closing of the port, the power of the Government must be regarded as plenary and the reasons for its exercise beyond question.

An award is asked of 1,008,000 bolivars for the loss of the coffee crops, estimated at 14,000 quintals, during the three years of the enforced abandonment of the Poggioli plantations. In the opinion of the umpire, this claim is greatly exaggerated. Payment for a large part of the crop of the year 1892 taken and destroyed by Government officials and others is provided for in this opinion, and the Poggiolis returned to their properties in the latter part of the year 1894. The umpire believes he will be doing full justice if he makes an award for 5,000 quintals at 72 bolivars per quintal (less 15 bolivars per quintal for the cost of production) or a total of 285,000 bolivars. In the judgment of the umpire this loss was the direct result of the actions of the agents of the Government, joined with those of unpunished malefactors, and for which the Government was responsible, and is not at all to be classed as indirect, the umpire adhering to the rule in

[a] Giacopini case, p. 765.
[b] See p. 819.

this respect laid down by him in the Martini case,[a] no suggestion being made that considerable crops were not or could not have been made during the time in question.

Without reciting in further detail the surrounding circumstances, an award will be made covering the following losses:

	Bolivars.
Burning of San Rafael sugar mill and house (first time)	4,000
Burning of San Rafael sugar mill and house (second time)	4,875
Destruction of bodega and other houses and property at Buena Vista	24,000
Merchandise and coffee at San José de Palmira	32,000
Cost of defending wrongful charges of importation of arms	30,460
Trip to Caracas to submit claim to legation and Venezuelan Government	13,628
Taking of mules and cattle	69,400
Destruction of 10 hectares of sugar cane and crop	13,600
Destruction of coffee and coffee mill at San Emigdio	6,900
Destruction of banana trees at Miraflores	800
Burning of house at El Pescado	1,000
Destruction of Santa María and El Pescado coffee mills	7,200
Cattle killed and horse injured at Emigdio	1,728
Sacking, etc., of store at Monte Carmelo	48,500
Injuries to properties from driving off agents, etc. (loss reckoned in absence of details)	25,000
Taking and destruction of coffee at San José de Palmira, San Cristóbal, and Monte Carmelo	24,000
Taking of merchandise on road to Monte Carmel	4,800
Loss of coffee from various points, taken or prevented from exportation at Buena Vista or La Dificultad	2,400
Loss of coffee crop during abandonment of plantations	285,000
Total	599,291

It is said that the assets of the firm on December 31, 1901, were 2,803,524 bolivars and the liabilities 1,234,739 bolivars, including 72,000 bolivars due Manuela Rosales. The net worth of the firm was 1,568,795 bolivars. It appears, therefore, by a careful calculation made by the honorable Commissioner for Italy, that Silvio Poggioli's interest amounted to 65.99 per cent of the whole, and all allowances made on account of injuries to the partnership are to be represented by an award of this percentage in favor of Silvio Poggioli, without any award to the heirs of Americo Poggioli for reasons above stated.

A sentence will therefore be signed in favor of Silvio Poggioli for 14,250 bolivars, plus 395,672.13 bolivars, with interest at the rate of 3 per centum per annum on 395,672.13 bolivars from July 1, 1893, to December 31, 1903. And the claim of the heirs of Americo Poggioli will be dismissed without prejudice to their right to relief in any appropriate forum.

SUMMARY OF CLAIMS.

No.	Name of claimant.	Amount claimed.	Amount disallowed.	Amount allowed with interest.	Remarks.
		Bolivars.	*Bolivars.*	*Bolivars.*	
1	Guiglielmo Felizola	44,590.00	39,290.00	5,300.00	Award by umpire.
2	Alberto Mattia	476.00		476.00	
3	Saverio Fracco	68,577.50	62,617.50	5,960.00	
4	Pietro Virago	12,691.00	11,151.00	1,562.84	Do.
6	Guiseppi La Sala	2,800.00		2,814.00	
7	Giovanni P. Salvati	20,007.24	14,007.24	6,040.50	Do.
8	Martini & Co	9,064,965.42	8,624,292.26	442,948.90	Do.
9	Giovanni Cervetti	3,400.00	1,676.00	1,753.00	Do.
11	Vingelli Domenico	2,588.00	2,588.00		
12	Giovanni Casagrande	300.00		302.00	

[a] See p. 819.

Summary of claims—Continued.

No.	Name of claimant.	Amount claimed.	Amount disallowed.	Amount allowed without interest.	Remarks.
		Bolivars.	*Bolivars.*	*Bolivars.*	
13	Salvatore Sambiaggio	5,133.52	5,133.52		Award by umpire.
14	Raffaele Perrone	27,360.00	21,360.00	6,045.00	Do.
15	Poggioli Hermanos	3,419,223.28	3,009,301.15	534,558.85	Do.
16	Pasquale Stabile	1,000.00		1,016.41	
17	Antonio Mazzei	84,720.00	65,750.00	19,218.19	
19	Pasquale G. Pastori	30,755.00	19,380.00	11,561.75	
20	Luigi Palumbo	4,361.00	560.00	3,853.00	
21	Fuscaldo Lotufo	800.00		810.80	
22	Emilio de Paola	386,006.20	386,006.20		Do.
23	Severino Norza	11,500.00	11,500.00		
25	Bisagno, Oliva & Co	462,698.26	202,698.26	260,000.00	
27	Antonio Fulco	30,000.00	30,000.00		Do.
29	Henriqueta Rauch Co	18,700.00	18,700.00		
30	Amadeo Vizconti	7,011.26	6,277.26	734.00	Do.
31	Genaro Boffolo	200,000.00	198,000.00	2,000.00	Do.
33	Corvaia Heirs	16,438,661.23	16,438,661.23		
34	Angelo Roni	2,400.00	2,400.00		
35	Pietro Lamboglia	2,447.00	2,447.00		
37	Guiseppi Bondi	500.00	500.00		
38	Vincenzo Cera	12,000.00	10,000.00	2,000.00	
39	Guiseppina Martini	110,000.00	110,000.00		
40	Carmela Fundisi	30,000.00	28,568.00	1,448.34	
41	Servio Piscopo	500.00	507.91		
44	Paolini Fratelli	351,800.00	351,800.00		
45	Vincenzo Martino	90,120.00	80,120.00	10,000.00	Do.
47	Vincenzo Rotondaro	1,520.00	520.00	1,000.00	
48	Eugenio Barletta	10,000.00	5,000.00	5,060.00	
49	Clemente Giordana	48,000.00	46,000.00	2,000.00	
50	Daniel de Caro	109,077.22	87,288.60	21,897.56	Do.
51	Vito de Zeo	140,000.00	140,000.00		Do.
52	Giovanni Pagnini	6,863.00	60.00	6,914.68	
56	Antonio Ciano	10,856.00	10,856.00		Do.
58	Bernardo Ciano	22,552.00	18,062.00	4,524.00	Do.
59	Domenico Ferzacca	8,082.00		8,617.67	
60	Estate of Sebastian Brignone	81,137.00	40,568.50	54,240.10	Do.
61	Estate of Martino Marratta	1,587.00	387.00	1,214.40	
62	Galileo Palmieri	5,200.00	1,600.00	3,600.00	
63	Alfredo Sardi	3,800.00	2,800.00	1,000.00	Do.
64	Antonio Luongo	2,040.00		2,073.49	
65	Emilio Paolini	15,618.00	8,531.00	7,087.00	Do.
66	Giuseppe Terzano	4,198.00	2,698.00	1,520.50	Do.
67	Saverio Russo	1,274.52	934.52	344.08	Do.
69	Francesco Pardisi	76,000.00	66,060.00	10,064.00	Do.
70	Angelo Raffaele and Giuseppe Alliegro	34,480.00	10,480.00	24,300.00	
71	Silvestre Manzi	437,000.00	290,657.00	147,075.00	Do.
72	Donato Saturno	95,590.25	57,290.25	38,300.00	Do.
73	Perrone & Co	10,322.61	6,282.61	4,088.48	Do.
74	Michele Parella	159,000.00	159,000.00		Do.
75	Giovanni B. Pontis	10,000.00	9,000.00	1,005.00	Do.
77	Salvatore Alberti	101,460.00	8,196.00	93,264.00	Do.
78	Lorenzo A. Oliva	2,158,807.00	2,108,437.63	50,421.22	Do.
79	Pietro Boschetti	21,342.00	17,622.00	3,777.35	Do.
80	Inocenzo and Francesco Bortone	56,480.00	55,980.00	504.00	Do.
81	Saverio Parella	120,000.00	120,000.00		Do.
82	Pasquale Sasone & Bro	8,080.00	7,192.00	888.00	
83	Nicola Bottaro	15,600.00	9,600.00	6,030.50	Do.
86	Saverio d'Amato	17,138.50	7,138.50	10,136.66	Do.
87	Constantino Murzi	11,662.39	7,964.39	3,698.00	Do.
88	Alessandro Sardi	10,443.36	6,083.36	4,065.12	
89	Defendente Balestrini	3,967.40	3,967.40		Do.
90	Gaetano Brando	5,313.04	5,313.04		Do.
91	Andrea Gioja	33,357.00	32,341.00	1,028.70	Do.
92	Giuseppe Boragina	20,000.00	20,000.00		Do.
93	Giuseppe Cantafio	4,000.00	3,500.00	500.00	Do.
94	Giffone, Rizzuti & Co	36,504.10	35,322.10	1,190.00	Do.
95	Angelo Salesi	22,552.80	17,928.00	4,679.51	Do.
96	Raffaele Simone	8,848.00	7,394.00	1,454.00	Do.
97	Giovanni Manzo	1,537.00	1,237.00	260.00	Do.
98	Giuseppe A. Manzo	9,000.00	4,700.00	4,349.09	
99	Giuseppe Garefalo	11,752.00	11,120.00	639.21	Do.
100	Massardo, Carbone & Co	18,212.00		21,083.42	Do.
101	Dominico Terzacca	106,722.00	106,198.00	540.00	Do.
102	Vincenzo Giffoni	23,752.60	19,938.60	3,814.00	
103	Biaggio A. Cesarino	50,000.00	10,000.00	40,000.00	Do.
104	Pasquale Guerrieri	19,375.00	19,375.00		Do.
105	Vincenzo Ferrara	4,400.00	2,000.00	2,418.00	Do.
106	Guilio Roversi	24,537.50		24,537.50	

Summary of claims—Continued.

No.	Name of claimant.	Amount claimed.	Amount disallowed.	Amount allowed without interest.	Remarks.
		Bolivars.	*Bolivars.*	*Bolivars.*	
107	Pasquale Zanella	3,492.00	3,372.00	121.74	Award by umpire.
108	Giovanni Zanella	7,636.00	6,516.00	1,136.24	Do.
109	Giovanni Sandon	3,857.00	3,557.00	304.35	Do.
110	Giovanni Cassol	4,236.00	3,286.00	950.00	
111	Deliscio Biagio	25,928.16	13,928.16	12,150.00	Do.
112	Raffaele Liento	6,090.00	6,090.00		Do.
114	Felice del Prete	3,296.00	2,016.00	1,290.00	Do.
115	Italian Postal Administration	2,509.57		2,948.74	Do.
116	Domenico Giordana	1,979.80	612.80	1,632.40	Do.
118	Biagio Paesano	33,678.48	27,738.48	5,970.00	Do.
119	Vincenzo Acri	4,826.00	4,826.00		Do.
121	Guiseppe Balestrini	1,844.00		1,869.85	
122	Francesco Giannini & Co.	21,000.00	17,794.00	3,206.00	Do.
123	Domenico Adriani	13,496.00	3,496.00	10,114.16	
124	Attilio Murzi	16,812.00	12,812.00	4,050.00	
125	Giovanni Giacomo Olivari	2,230.00	830.00	1,407.00	
127	Giovanni Fiori	99,234.00	99,234.00		Do.
128	Francesco Cedrazo	5,120,00	2,460.00	2,660.00	
129	Guiseppe Murzi	30,430.00	4,000.00	26,731.74	
130	Vincenzo Vattuono	2,740.00	2,200.00	547.38	Do.
131	Antonio Bonanno	14,860.00	14,860.00		Do.
132	Vincenzo Mileo	11,330.00	9,430.00	1,924.85	Do.
133	Carlo Falzette	25,655.00	25,655.00		Do.
134	Tomaso Perruolo	3,220.85	520.85	2,727.67	Do.
135	Antonio del Vecchio & Bro.	16,048.00	15,316.00	736.00	Do.
137	Andrea Cantelmi	2,940.00		2,955.00	
138	Ciriaco Tancredi	1,828.00	1,828.00		
139	Pietro Carpinetto	13,488.50	4,988.50	8,500.00	
142	Guiseppe Carruso	7,876.75	7,876.75		Do.
143	Francesco Gentile	11,186.00	11,186.00		Do.
144	Guiseppe Caliendo	14,649.00	13,109.00	1,515.89	Do.
145	Antonio Serritiello	54,320.00	54,320.00		Do.
147	Estate of Vincenzo Guiliano	40,804.42	40,804.42		Do.
149	Estate of Michele Alliegro	100,000.00	100,000.00		Do.
150	Mateo Sardi	19,976.00	14,976.00	5,000.00	
151	Emilio Garibaldi	47,963.62	17,963.62	30,342.50	
152	Nicola Sanseverino	228,837.04	78,837.04		
153	Filippo Capano	10,000.00	8,800.00	1,206.00	
154	Florida Bros	8,032.00	8,032.00		Do.
155	Francesco Bellizia	169,305.00	169,305.00		Do.
156	Michele Garoni	3,763.00	986.00	2,777.00	Do.
157	Di Maria Bros	11,009.44	11,009.44		Do.
158	Emilio Parella	71,584.00	68,584.00		Do.
159	Clelia Miliani	155,200.00	150,200.00	5,041.66	
160	Luongo Bros	68,000.50	67,066.50	940.30	Do.
163	Nicola Lignori	20,000.00	19,000.00	1,011.08	
164	Brando Bros	1,483.00		1,494.00	Do.
165	Giuseppe Manniello	60,000.00	60,000.00		
166	Carlos Pavolini	50,000.00	46,000.00	4,050.00	
167	Mayo & Mugno Alliegro	90,800.00	90,800.00		Do.
169	Felice Barbarito	6,574.52	6,538.52	37.00	Do.
171	Tuneco Bros	1,077.48	1,077.48		Do.
172	De Canio Bros	8,594.78	2,475.78	6,164.00	Do.
173	Giuseppe Panza	48,368.00	47,468.00	907.00	Do.
174	Nicola Bianculli	20,000.00	20,000.00		Do.
175	Giuseppe Germino	764.00	764.00		Do.
177	Bortone & Luca	25,816.00	15,816.00	10,000.00	Do.
178	Antonio Mazzei	24,000.00	23,550.00	454.00	Do.
182	Guiglielmo Turchio	48,800.00	48,800.00		
183	Michele Ciano	3,840.00	3,840.00		Do.
184	Rosario Maria Saturno	116,836.00	101,836.00	15,000.00	Do.
185	Enrico Giorgi	2,830.80	287.35	2,543.45	Do.
188	Domenico Loero	14,900.10	9,920.10	5,039.76	Do.
189	Dominico Sardi	100.00		101.14	
190	Raffaele Mastrangelo	18,220.00	13,926.00	4,326.00	Do.
193	Cafasso Belmarino	4,050.00	2,550.00	2,000.00	
194	Maria Berti de Carbone	10,765.60	2,445.60	9,443.20	
195	Nicola & Giuseppe Lipo	400.00		404.25	
196	Luigi Luongo	12,000.00	10,760.00	1,254.88	Do.
197	Elbano Fontana	3,200.00	3,225.60		Do.
198	Olga Barti	74,134.75	74,134.75		
199	Angelo Giuseppe Menda	23,668.00	18,988.00	4,735.00	
200	Fernando Manriello	22,612.00	15,112.00	16,160.00	
201	Filippo la Corte	24,559.00	8,559.00	7,500.00	Do.
202	Ulisse Pardi	3,784.00		6,696.00	Do.
203	Geroacio Ricci	19,744.00	15,744.00	4,020.00	
204	Francesco Barone	32,000.00	27,000.00	5,050.00	
206	Giuseppe D. Amico	4,216.00	1,716.00	2,518.75	Do
207	Luigi Paesano	6,640.00	6,640.00		Do.

Summary of claims—Continued.

No.	Name of claimant.	Amount claimed.	Amount disallowed.	Amount allowed without interest.	Remarks.
		Bolivars.	*Bolivars.*	*Bolivars.*	
208	Vincenzo Capodiferro	4,751.10	4,751.10		Award by umpire.
209	Domenico Giacopini	435,000.00	364,145.00	119,443.00	Do.
210	Successors of Giuseppe Candia.	19,013.12	19,013.12		Do.
211	Antonio Veltre	4,616.00	3,308.00	1,318.00	Do.
212	Giovanna Cechin de Boni	2,589.80	2,089.80	505.12	
213	Antonio Molinaro	16,410.00	9,856.00	6,632.64	
214	Beatriz di Caro	430,052.00	379,052.00	51,007.00	Do.
215	Pietro Tedesco	23,059.48	18,259.48	4,856.80	
216	Francesco Candia	17,070.00	12,670.00	4,433.00	Do.
217	Luigi Candia	9,198.00	5,962.00	3,260.27	Do.
218	Luigi Frangello	13,594.00	13,594.00		
219	Michele Vecchione	34,465.44	29,425.44	5,099.66	Do.
221	L. L. Repetto & Co	6,647.76		8,954.08	
222	Ulisse Balestrini	1,400.00		1,415.98	
223	Matilde Miliani	67,573.48	67,573.48		Do,
224	Francesco Tori	27,060.00	9,060.00	18,205.50	Do.
225	Luigi Guastini	6,829.00	5,232.00	1,613.00	Do.
227	Giuseppe Boccardo	291,406.96	23,926.04	267,480.92	Do.
230	Giovanni B. Borradier	800.00	800.00		Do.
231	Massimo Provenzali	2,000.00	1,500.00	505.70	
233	Liugi Simone Tagliaferro	5,000.00		5,000.00	Do.
236	Pasquale de Luca	22,012.00	15,012.00	7,058.91	
237	Carmelo de Luca	4,620.00		4,658.50	
240	Ciriaco V. Gaglianoni	7,153.08	6,493.08	701.00	Do.
241	Giovanni Damelia	7,424.00	7,424.00		
242	Biaggio Vita	1,792.00		1,800.00	
243	Bartolo Tononi	240,350.00	240,350.00		Do.
244	Pietro Forte	598.50		605.33	
245	Carlo Reno Boniforte	54,904.00	42,904.00	12,090.00	Do.
246	Giuseppe Iaselli	5,525.00	3,445.00	2,096.00	Do.
247	Raffaele Porcelli	26,000.00			Dismissed without prejudice.
248	Caliendo Aniello	26,136.00	26,136.00		
249	Francesco Faracco	3,012.00	3,012.00		Award by umpire.
250	Carlo & Giovanni Lapenta	20,000.00	18,400.00	1,600.00	
251	Giuseppe Pandolfi	2,297.00	1,560.00	742.00	Do.
252	Giuseppe Olivari & P. Lupi	6,517.50	4,783.50	1,745.00	Do.
253	Domenico Pelusso	964.00	400.00	568.00	Do.
255	Giuseppi Rovatti	13,919.55	6,419.55	7,556.25	Do.
269	Pietro Amore	14,866.88	13,366.88	1,500.00	Do.
278	Guglielmo G. Felizola	10,612.00		10,726.96	
280	Odoardo Gentini	3,900.00	3,900.00		Do.
281	Labella Bros	13,790.00	13,790.00		
286	Antonio Troisi	8,930.00	7,330.00	1,600.00	Do.
289	Casimiro Binolli	3,982.00	2,982.00	1,000.00	
294	Francesco Paparoni	7,000.00	7,000.00		Do.
297	Nicola Sasone	15,148.75	6,188.75	9,016.00	Do.
298	Pietro Martorano	8,722.00	8,722.00		Do.
299	Francesco Limone	658.00	502.00	156.00	Do.
300	Francesco A. d'Amico	17,000.00		17,000.00	
301	Santos Garlotti	1,710.00	600.00	1,122.00	Do.
302	Giuseppe Salermo	281.00		284.04	
303	Francesco Barone	1,453.00	543.00	917.00	Do.
304	Angelo Reveane	4,163.75	4,163.75		Do.
305	Eugenio Rignozi	2,776.00	2,776.00		Do.
306	Angelo Stiz	1,759.00	1,759.00		Do.
307	Domenico Marchioro	1,885.00	1,885.00		Do.
308	Desiderio Fonti	1,982.00	1,982.00		Do.
309	Domenico Sardi	758.00	758.00		
311	Vincenzo Manilia	10,000.00	9,899.20	100.80	Do.
315	Dominico Monterosso	20,000.00	17,500.00	2,513.00	
316	Anunziata Petrocelli	45,000.00	44,075.00	930.00	Do.
317	Pasquale Gravina	6,981.88	4,981.88	2,010.00	
320	Santos Bartoli	132,040.00	104,900.00	27,140.00	Do.
321	Michele Cotoni	17,000.00	15,000.00	2,000.00	Do.
328	Eugenio Barletta	4,729.00	4,729.00		
331	Raffaele Veglianti	21,045.00	21,045.00		Do.
334	Francesco A. Vita	4,000.00	2,940.00	1,060.00	
337	Carmelo Rugero	2,000.00	1,598.00	402.00	
377	Giuseppe A. Burelli	15,500.00			Dismissed without prejudice.
	Total	39,844,258.09	37,075,172.51	2,975,906.27	

NOTE.—The following claims were withdrawn from the consideration of the Commission: Nos. 5, 10, 18, 24, 26, 28, 32, 36, 42, 43, 46, 53, 54, 55, 57, 68, 76, 84, 85, 113, 117, 120, 126, 136, 140, 141, 146, 148, 161, 162, 168, 170, 176, 179, 180, 181, 186, 187, 191, 192, 205, 220, 226, 228, 229, 234, 235, 238, 239, 254, 256–268, inclusive, 270–277, inclusive, 279, 282–285, inclusive, 287, 288, 290–293, inclusive, 295, 312, 313, 314, 318, 319, 322–326, inclusive 329 330, 332, 335, 336, 338–376, inclusive; in all 137 claims.

MEXICAN-VENEZUELAN MIXED CLAIMS COMMISSION.

PROTOCOL, FEBRUARY 26, 1903.

Protocolo de Convenio entre el Embajador de México en los Estados Unidos de América y el Plenipotenciario de la República de Venezuela para someter á arbitramento todas las reclamaciones pendientes de ciudadanos mexicanos contra la República de Venezuela.

Los Estados Unidos Mexicanos y la República de Venezuela, por medio de sus representantes, Manuel de Azpíroz, Embajador de los Estados Unidos de México, y Herbert W. Bowen, Plenipotenciario de la República de Venezuela, han convenido y firmado el siguiente protocolo:

ARTÍCULO I.

Todas las reclamaciones de ciudadanos de los Estados Unidos de México contra la República de Venezuela que no hayan sido resueltos por la vía diplomática, ó por arbitramento entre los dos Gobiernos, y que sean presentadas á la Comisión que se designa en seguida, por el Ministerio de Relaciones Exteriores de México, ó en su nombre por su agencia en Caracas, serán examinadas y resueltas por una comisión mixta que se establecerá en Caracas y se compondrá de dos miembros, uno de los cuales será nombrado por el Presidente de los Estados Unidos Mexicanos, el otro por el Presidente de Venezuela.

Se conviene en que un tercero en discordia será nombrado por Su Majestad el Rey de España. Si cualquiera de estos comisionados ó

Protocol of an agreement between the Ambassador from Mexico to the United States of America and the Plenipotentiary of the Republic of Venezuela for Submission to Arbitration of all unsettled Claims of Mexican Citizens against the Republic of Venezuela.

The United States of Mexico and the Republic of Venezuela, through their representatives, Manuel de Azpíroz, Ambassador of the United States of Mexico, and Herbert W. Bowen, the Plenipotentiary of the Republic of Venezuela, have agreed upon and signed the following protocol:

ARTICLE I.

All claims owned by citizens of the United States of Mexico against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the commission hereinafter named, by the Department of State and Foreign Relations of Mexico, or in its name by its agency at Caracas, shall be examined and decided by a mixed commission, which shall sit at Caracas, and which shall consist of two members, one of whom is to be appointed by the President of the United States of Mexico and the other by the President of Venezuela.

It is agreed that an umpire may be named by His Majesty the King of Spain. If either of said commissioners or the umpire should

el tercero, faltare, ó cesare de funcionar, su sucesor será inmediatamente nombrado de idéntica manera que le fué su predecesor. Dichos comisionados y el tercero deberán estar nombrados antes de el primero de Mayo de 1903.

Los comisionados y el tercero se reunirán en la ciudad de Caracas el día primero de junio de 1903. El tercero presidirá las deliberaciones de la Comisión y será competente para resolver cualquier punto sobre el que los comisionados no estuvieren de acuerdo. Antes de entrar en las funciones de su encargo, los comisionados y el tercero prestarán juramento ó protesta solemne de examinar cuidadosamente y resolver con imparcialidad conforme á justicia y á las prevenciones de este convenio, todas las reclamaciones que les fueren sometidas, y tal juramento ó protesta se hará constar en las actas de sus procedimientos. Los comisionados, ó en caso de su desacuerdo, el tercero, resolverán todas las reclamaciones sobre la base de una equidad absoluta, sin consideración á objeciones de carácter técnico, ó á las disposiciones de la legislación local.

Las decisiones de la Comisión, y en el caso de desacuerdo, las del tercero, serán definitivas y concluyentes. Se darán por escrito. El importe de todas las sentencias será pagadero en oro de los Estados Unidos ó en su equivalente en plata.

fail or cease to act, his successor shall be appointed forthwith in the same manner as his predecessor. Said commissioners and umpire are to be appointed before May 1, 1903.

The commissioners and the umpire shall meet in the city of Caracas on the first day of June, 1903. The umpire shall preside over their deliberations, and shall be competent to decide any question on which the commissioners disagree. Before assuming the functions of their office the commissioners and the umpire shall take solemn oath carefully to examine and impartially decide, according to justice and the provisions of this convention, all claims submitted to them, and such oaths shall be entered on the record of their proceedings. The commissioners, or in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature, or of the provisions of local legislation.

The decisions of the commission, and in the event of their disagreement, those of the umpire, shall be final and conclusive. They shall be in writing. All awards shall be made payable in United States gold, or its equivalent in silver.

ARTÍCULO II.

Los comisionados, ó el tercero en su caso, examinarán y resolverán dichas reclamaciones atendiendo solamente á las pruebas ó informaciones que les sean suministradas por los Gobiernos respectivos ó en su nombre. Estarán obligados á recibir y considerar todos los documentos ó declaraciones escritas que les sean pre-

ARTICLE II.

The commissioners, or umpire, as the case may be, shall investigate and decide said claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of

sentados por los Gobiernos respectivos ó en su nombre para apoyar ó contestar cualquiera reclamación, y oirán los alegatos verbales ó escritos que haga el agente de uno y de otro Gobierno sobre cada reclamación. En caso de discordia entre los Comisionados respecto á cualquiera reclamación específica decidirá el tercero.

Cada reclamación deberá presentarse en forma á los comisionados dentro de los treinta días siguientes al de su primera junta, á menos que los comisionados, ó el tercero en cualquier caso, prorroguen hasta por tres meses y no más el termino fijado para presentar la reclamación. Los comisionados estarán obligados á examinar y resolver cada reclamación dentro de los seis meses siguientes al día de su primera presentación en forma, y, en el evento de su desacuerdo, el tercero las examinará y resolverá dentro de otro seis meses á contar desde la fecha de tal desacuerdo.

the respective Governments in support of or in answer to any claim, and to hear oral or written arguments made by the agent of each Government on every claim. In case of their failure to agree in opinion upon any individual claim, the umpire shall decide.

Every claim shall be formally presented to the commissioners within thirty days from the day of their first meeting, unless the commissioners or the umpire in any case extend the period for presenting the claim not exceeding three months longer. The commissioners shall be bound to examine and decide upon every claim within six months from the day of its formal presentation, and in case of their disagreement, the umpire shall examine and decide within a corresponding period from the date of such disagreement.

Artículo III.

Los comisionados y el tercero llevarán un libro en el que harán constar minuciosamente sus procedimientos. Para este fin cada comisionado nombrará un secretario para que lo ayude en el despacho de los labores de la Comisión. Con exceptión de lo que aquí se ha estipulado, toda cuestión concerniente al procedimiento será resuelta por la Comisión, ó, en el caso de su desacuerdo, por el tercero.

Article III.

The commissioners and the umpire shall keep an accurate record of their proceedings. For that purpose, each commissioner shall appoint a secretary versed in the language of both countries, to assist them in the transaction of the business of the commission. Except as herein stipulated, all questions of procedure shall be left to the determination of the commission, or, in case of their disagreement, to the umpire.

Artículo IV.

Cada una de las partes contratantes pagará por mitad una remuneración razonable á los comisionados y al tercero por sus servicios y gastos y las demás expensas de dicho arbitramento.

Article IV.

Reasonable compensation to the commissioners and to the umpire for their services and expenses, and the other expenses of said arbitration, are to be paid in equal moieties by the contracting parties.

ARTÍCULO V.

Para el pago del total monto de las reclamaciones que se decidan como queda dicho, y de otras reclamaciones de ciudadanos ó súbditos de otras naciones, el Gobierno de Venezuela apartará con este fin, y no consignará para ningún otro objeto, comenzando desde el mes de Marzo de 1903, el treinta por ciento de la recaudación mensual por derechos aduanales de La Guaira y Puerto Cabello, y las cantidades así apartadas serán divididas y distribuidas de conformidad con lo que decida el Tribunal de La Haya.

En el caso que no se cumpla este arreglo, serán encargados de las aduanas de ambos puertos, empleados Belgas, quienes las administrarán hasta que las obligaciones del Gobierno de Venezuela respecto á dichas reclamaciones hayan quedado cumplidas. La remisión al Tribunal de La Haya de la cuestion arriba indicada será asunto de un protocolo especial.

ARTÍCULO VI.

Queda entendido que si antes del primero de Junio de 1903, las reclamaciones de México arriba mencionadas son transigidas por arreglo entre los reclamantes y el Gobierno de Venezuela, ó decididas á favor de dichos reclamantes por la Alta Corte de Venezuela, las mismas reclamaciones no serán sometidas al arbitraje prevenido en los artículos precedentes.

En todo caso, la suma determinada por transacción, por sentencia ó por laudo será pagado conforme á los términos estipulados en el Artículo V de este protocolo.

Hecho en Washington, D. C., hoy veintiseis de Febrero de 1903.

ARTICLE V.

In order to pay the total amount of the claims to be adjudicated as aforesaid, and the other claims of citizens or subjects of other nations, the Government of Venezuela shall set apart for this purpose, and alienate to no other purpose, beginning with the month of March, 1903, 30 per cent. in monthly payments of the customs revenues of La Guaira and Puerto Cabello, and the payments thus set aside shall be divided and distributed in conformity with the decision of the Hague Tribunal.

In case of the failure to carry out the above agreement, Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government in respect of the above claims shall have been discharged. The reference of the question above stated to the Hague Tribunal will be the subject of a separate protocol.

ARTICLE VI.

It is understood that if before the 1st of June, 1903, the claims of Mexico, above mentioned, are settled by an agreement between the claimants and the Government of Venezuela, or decided in favor of said claimants by the high court of Venezuela, said claims shall not be submitted to the arbitration agreed upon in the preceding articles.

In any case the sum determined by settlement, by judgment or by award shall be paid in accordance with the stipulations of article V of this protocol.

Done at Washington, D. C., today, February 26, 1903.

MANUEL DE AZPÍROZ. [SEAL.]
HERBERT W. BOWEN. [SEAL.]

PERSONNEL OF MEXICAN-VENEZUELAN COMMISSION.

Umpire.—Ramón Gaytán de Ayala, minister of Spain to Venezuela.
Mexican Commissioner.—Fernando Duret.
Venezuelan Commissioner.—José Vicente Iribarren.
Mexican Agent.—Ricardo R. Guzmán.
Venezuelan Agent.—F. Arroyo-Parejo.
Mexican Secretary.—Bartolomé López de Ceballos.
Venezuelan Secretary.—Delicio Abzueta.

RULES OF THE MEXICAN-VENEZUELAN COMMISSION.

1. As soon as the claim is presented by the Government of Mexico, or in its name by its agency at Caracas, such presentation shall be made known to the agent of Venezuela.

2. The agent of Venezuela shall be allowed fifteen days to answer, which may be extended, at the judgment of the Commission. This time having elapsed without any answer being presented the claim shall be considered as traversed, and action shall be taken to decide it upon the proofs submitted. If a claim be answered, the adverse party, if it desires to reply, may do so within the space of seven days, and an equal term is understood to be allowed for the rejoinder.

3. Parties, if they be able to do so, shall present, together with their claims, the documents and proofs upon which they base them.

4. If any of the parties be compelled to request an extension of time for the production of proofs, the Commission shall decide how long shall be allowed them.

5. The proofs having been presented, or the time fixed for their production having expired, arguments of the parties shall be heard, if desired, unless they elect to present written arguments within the same time.

6. The arguments of the parties having been completed, or their written briefs presented, the claim shall be decided by the Commissioners within the term of five days if they agree, and in case they disagree, within the five following days they shall draw up their opinions in writing, substantiating them briefly. The point or points upon which they disagree shall ipso facto be submitted to the decision of the umpire.

7. If any case require, in the judgment of the commissioners, or of the umpire, as the case may be, a special mode of procedure, it shall be outlined as soon as this necessity is known and manifested.

OPINIONS IN THE MEXICAN-VENEZUELAN COMMISSION.

Del Rio Case.

Under the protocol the Commission has no jurisdiction to decide claims of Venezuela against Mexico; but an exchange of notes of the foreign offices of the two countries giving consent that the Commission take this course, confers jurisdiction to hear such claims.

Where a sum of money loaned is procured at a premium and unpaid, the amount of this premium will be allowed as a resultant damage; but interest will only be allowed on the amount actually received by the debtor.

Where money is loaned for a specific period and it is stipulated that no interest for this period is to be charged, interest will nevertheless be allowed on the amount due after the debt falls due.

In the absence of a stipulated rate of interest, interest will be allowed at the current rate at the time of the contracting of the loan, especially where this rate has been acknowledged to be equitable by the predecessor in interest of the debtor.

The present legal rate of interest in Venezuela can not control where a debt has been contracted prior to the statute.

Where a debt is to be paid at a specified time it is not compulsory upon the creditor to make demand upon the debtor in order that the latter may be in default, and for that reason interest will be allowed upon a claim from the time the money fell due, and not merely from the day that demand was made.

A claim for damages on the part of Venezuela which can not be fixed in amount, and which is not the property of the Government of Venezuela, can not be set up as a counterclaim against the claimants who have only assumed the liability of Mexico for counterclaims of Venezuela.

A claim of an individual against a government does not become international in character until demand has been made on the government debtor.

Credit will be allowed Venezuela for a proportionate part of moneys paid by the old Republic of Colombia on account of the debt for which claim is now made.

No claim can be maintained for services rendered by ships of Colombia where it was expressly stipulated in the contract for their hire that payment should begin to be made from the date of their departure from Colombian ports for Mexico, and they never did, in fact, depart until after the time for which claim is made for their services.

SUMMARY OF CLAIM.

The agent of the Government of Mexico presented a claim against Venezuela arising out of a loan of £63,000 to the old Republic of Colombia, made on April 7, 1826.

This debt was assigned by Mexico to Martinez del Rio Hermanos, and at present belongs to their successors in interest who are Mexican citizens.

The origin of the debt is set forth in an instrument executed in London April 7, 1826, before Mr. Windale, mayor of the city, by Vicente Rocafuerte and Manuel José Hurtado, the former chargé d'affaires of Mexico and the latter minister of Colombia accredited to the Court of St. James.

The essential parts of the instrument were included in the assignment of the debt in favor of Martinez del Rio Hermanos, executed by the Government of Mexico on August 16, 1856, which was placed in evidence. They are as follows:

1. B. A. Goldschmid & Co., holders of a considerable sum of money belonging to the Republic of Colombia, having failed, the payment of £63,000, destined to cover the dividend of the payment of the public debt, which was to fall due on May 1, 1826, was suspended.

2. Señor Hurtado proposed to Señor Rocafuerte that he advance to him (Hurtado) the necessary funds for the payment of the dividend which he had at his disposition with Messrs. Barkley, Herring, Richardson & Co. on account of money advanced on a loan negotiated for Mexico.

3. Señor Rocafuerte agreed to the request of Mr. Hurtado and gave orders to Messrs. Barkley, Herring, Richardson & Co. to pay, out of the money belonging to Mexico in their hands, the sum of £63,000 to meet the interest and other expenses of the Colombian loan which would fall due on May 1, 1826, on the bonds issued on April 2, 1824.

4. Señor Hurtado made solemn and formal promise on the part of the United States of Colombia to repay the said sum of £63,000 without interest within the space of eighteen months.

Upon the termination of the existence of the Republic of Colombia,

which had been made up by the union of New Granada, Venezuela, and Ecuador, each one of these became a sovereign and independent state; the two former entered into a convention concerning the division and assumption of the debts of the old Republic of Colombia at Bogotá on December 23, 1834, providing for the payment of said loan of £63,000 in the following manner:

The Republic of Venezuela was to pay 28½ per cent, the Republic of Colombia 50 per cent, and Ecuador 21½ per cent. The amounts, therefore, respectively due were, by Venezuela, £17,955; by New Granada, £31,500, and by Ecuador, £13,545.

The ratifications of the convention were exchanged at Bogotá on the 7th of February, 1838.

Although Ecuador was not a party to the convention, it accepted it afterwards in toto, the ratifications being exchanged between that Republic, Venezuela, and New Granada on the 22d of February, 1838.

Finally, the act of the Venezuelan Congress of April 8, 1840, expressly recognized the debt, referring to the convention of December 23, 1834, and making provision for the appropriation of 160,000 pesos annually from the customs receipts for the payment of the part of the interest, which, according to said convention, was acknowledged due by Venezuela on the foreign debts of 1822 and 1824, reserving the right to provide respecting the Mexican debt as soon as it should be liquidated.

As soon as the Mexican department of foreign relations learned of the action of Señor Rocafuerte in making this loan to the Colombian representative, it addressed a note to the Treasury Department, which disapproved the action of Messrs. Barkley, Herring, Richardson & Co., because of a different order given concerning the money on deposit with the house.

Although the Mexican Government did not authorize the loan nor, once it was made, approve it, it was obliged to submit to it.

Having awaited for the expiration of the eighteen months, the Government of Mexico ordered the Mexican consul in London to institute negotiations with the minister of the Republic of Colombia for its repayment. These negotiations did not secure the desired result, but the Government of Colombia offered to sell Mexico two frigates, built for the Colombian navy, on condition that £63,000 should be deducted from their price. This proposition was rejected by the Government of Mexico.

The most important step taken by Mexico to obtain the payment of the debt was made in 1855 through her minister plenipotentiary to the Republics of New Granada, Venezuela, and Ecuador. The results of this negotiation were the following:

Señor Plata, secretary of the treasury, admitted that the debt claimed was a debt of honor, and that New Granada was disposed to make a prompt settlement with Mexico concerning it.

Said secretary of the treasury stated that the principal of the debt should be fixed at £72,622.44, the sum which the £63,000 actually cost Mexico, and that said sum should bear an annual interest of 6 per cent, thus far acceding to the demand of the Mexican representative, Señor Morao, for £115,659 and *compound interest.*

The mission of Señor Morao thus terminated without his being able to obtain a settlement of the debt claimed.

On August 16, 1856, by an instrument executed before the notary, Don Ramón de la Cueva, the secretary of the treasury and public credit of Mexico, assigned to del Rio Hermanos its demand against New Granada, Venezuela, and Ecuador, ceding to said assignee all the rights and actions concerning the said debt which belonged to Mexico, and the assignee undertaking to assume any debts due the old Republic of Colombia by Mexico.

The succession of the present claims to the rights of the original assignees from the Government of Mexico was clearly shown.

In view of the foregoing, the Mexican agent made claim for £20,697.40, which, in accordance with the convention of December 23, 1834, between the three Republics which formerly made up the old Republic of Colombia, had been assumed by Venezuela, demanding, further, simple interest at 6 per cent from October 7, 1827, this being the day of the expiration of the eighteen months during which time it was to bear no interest.

Interest at 6 per cent was demanded in view of the fact that this was the rate suggested by the Colombian representative to Señor Morao in 1856, as above stated; also stating that other debts negotiated by Mexico at the same time bore interest at 6 per cent.

This demand was reduced by 28½ per cent of 3,500 pesos (say $1,938), which had been paid to the Mexican representative, Señor Torrens, in Bogotá, in March, 1829.

GAYTÁN DE AYALA, *Umpire:*

Arbitral award in the claim presented by the United States of Mexico against the Republic of the United States of Venezuela, arising out of the loan of £63,000 made by Mexico to the old Republic of Colombia in accordance with an agreement executed April 7, 1826, a debt which was assigned by Mexico to Messrs. Martinez del Rio Hermanos, and which actually belongs to their successors, Doña María Martinez del Rio de Castiglione, Doña Angela Martinez del Rio Thomás, Doña Julia Martinez del Rio de Gonzalez Pavón, Don Manuel Martinez del Rio, Don Pablo Martinez del Rio, Don Nicolás Martinez del Rio, Don Ventura Martinez del Rio, all Mexican citizens, and in the claims presented by the Government of the United States of Venezuela against the United States of Mexico:

1. For the unlawful collection of duties upon export products.
2. For the value of the ship and cargo of the schooner *Carmen*, a prize of the Colombian cruiser *Zulmé*.
3. For the sum of money paid by Colombia in March, 1829, to the chargé d'affaires of Mexico.
4. For the aid of naval vessels asked of Colombia by the Government of the United Mexican States during the years 1824 and 1825 to cooperate in the siege of the fortress San Juan de Ulúa.

Don Ramón Gaytán de Ayala y Brunet, envoy extraordinary and minister plenipotentiary of His Majesty the King of Spain to Venezuela, umpire of the Mixed Venezuelan-Mexican Commission, constituted in Caracas by virtue of the protocol of Washington, February 26, 1903, having been requested by the respective Commissioners of the two interested nations to render judgment upon the points of difference to which the claim of Messrs. Martinez del Rio Hermanos, and those which the Venezuelan Government has presented against Mexico, have given rise;

In view and by consequence of the disagreement existing between said commissioners at the close of their deliberations concerning this matter, and inspired by the desire to merit the confidence which the two said Republics of Venezuela and Mexico have mutually shown by submitting to his decision a matter of such importance, and subjecting himself in every way to the provision contained in Article I, paragraph 3, of said convention of Washington to decide all the claims upon a basis of absolute equity;

As a preliminary and indispensable explanation relative to the competency and power belonging to the Commission, states:

That in said protocol of Washington, of February 26 of the present year, it is provided that the object of the Commission is to examine and decide the claims of citizens of the United States of Mexico against Venezuela. Its attributes can not, therefore, extend beyond the limit agreed on, notwithstanding the wishes, manifested by the representatives of the two interested nations, so as to include and submit to the determination of the Commission the claims which the Government of Venezuela has presented against the Mexican Republic.

In order to overcome this difficulty arising out of the limits of the international agreement itself, the Commission has determined that it is sufficient to obtain from the Governments of the interested Republics an express declaration of their consent to the demand of the extension of the powers in question, specifying that they confer the necessary power upon the members who form the Mixed Commission already constituted, to exercise with respect to the claims of Venezuela against Mexico the same powers as those given it by the protocol at Washington with reference to the claims of Mexico against Venezuela.

Under date September 26, 1903, the President of the Commission received from the Government of Mexico a telegram couched in the following terms:

SPANISH MINISTER, *Caracas:*

Mexican Government authorizes arbitral commission to examine and decide counterclaims presented by Venezuela.

ALGARE.

The Government of Venezuela, on its part, in a note dated September 23, 1903, addressed by its minister of foreign relations, His Excellency Alejandro Urbaneja, to the Commissioner of Venezuela in the Mixed Claims Commission, gave its consent in the terms expressed in said note, which is annexed to the record of the claim.

The Commission, in the session of September 28, 1903, took cognizance of both documents, its jurisdiction being thus established to examine and decide all the questions submitted for its judgment.

These questions are the following:

1. The Government of Mexico claims from the Government of Venezuela as the original capital giving rise to and underlying the claim of Messrs. Martinez del Rio Hermanos the sum of £20,697.40.

2. It demands interest at 6 per cent per annum on the foregoing sum, counting from the 7th of October, 1827, to the 31st of December of the current year.

The Government of Venezuela demands—

1. Payment in compensation for the sum unlawfully collected for import duties on cocoa coming from Maracaibo and Guayaquil;

2. Compensation for the value of the ship and cargo of the schooner

Carmen, a prize of the Colombian cruiser *Zulmé*, left in the port of Campeche;

3. The return of 28½ per cent of 8,500 pesos fuertes delivered by Colombia on March 18, 1828, to the chargé d'affaires of Mexico, Col. Anastasio Torrens; and

4. Payment of an indemnity for the naval aid agreed on between Mexico and Colombia for the purpose of cooperating in the capture of San Juan de Ulúa.

1. Question. To the demand of the Commissioner of Mexico asking that there be acknowledged as to the principal of the loan made to Colombia the sum of £20,697.40, the Commissioner of Venezuela answers that said Republic can not accede to it because it was only £17,955, the sum in cash received by the representative of Colombia at the time the loan in question was negotiated. It is not just nor equitable to make the Republic liable for a greater sum than that received. And he bases his denial, furthermore, on the provisions of the contract of the loan made in London April 6, 1826, which appears in evidence.

The Commissioner of Mexico proves, by documents duly legalized, which are also to be found in the evidence of the claim, that the sum of £17,955 cost Mexico £20,697.40, because said sum was taken from funds obtained by means of a loan negotiated by the Government of Mexico with the house of Barkley, Herring, Richardson & Co., of London, and effected at a discount of 13¼ per cent; wherefore the sum in cash of £17,955 delivered to Colombia was in reality worth £20,697.40 claimed by Mexico from Colombia.

Taking into consideration the fact that the validity of the debt is recognized in principle by both interested parties, taking into consideration the foregoing observations of both Commissioners and the correctness of the facts set forth in every document having been ascertained;

Considering that, even though it be true that the sum received in cash by the representative of Colombia is set out in the contract for the loan mentioned, it is also evident that its real value, with respect to Mexico, is what the agent of that Government now demands in favor of the interested party, as is shown from the proof as to the origin of the funds out of which the loan was furnished;

Considering that because it is of the greatest importance, with respect to future decisions, to determine in a clear, precise way the nature of the various sums which constitute the debt, the sum of £17,955 is, in justice, to be considered as the original capital which was received in cash by the representative of Colombia, and to consider as a resultant damage, arising out of the transaction, the difference between this sum of £17,955 and £20,697.40 claimed by the Mexican Commissioner, which is £2,742.40.

2. Question. The representative of Mexico demands interest at the rate of 6 per cent per annum upon the principal of the loan, counting from October 7, 1827, until December 31 of the current year.

In support of his right to claim interest, he invokes the principle of justice, universally recognized, that the debtor is liable for the damages and injuries caused by the nonfulfillment of his obligations and "in treating of ascertained sums of money, these damages and injuries are repaired by the payment of interest." With respect to the rate at which said interest must be fixed, he maintains that it can not be other

than 6 per cent per annum, and he bases this rate of interest upon the recitations contained in the contract for a loan between Mexico and Colombia, upon the laws which were at that time in force, upon similar cases between the two nations interested, and upon arrangements for the negotiation of loans made as well by Colombia as by Mexico under similar circumstances of time and place.

The Venezuelan Commissioner is of opinion that Venezuela is not bound to pay the interest claimed, because it was thus provided in the Rocafuerte-Hurtado contract, and because the exact amount of the debt is not determined, and in case the arbitral award should conform to the demand of claimant, he asks that the rate fixed may be 3 per cent per annum.

Taking into consideration these foregoing opinions of the Commissioners, and having examined the considerations to which the Commissioner of Mexico refers, and having been convinced of the correctness of his statements;

Considering, as an argument of special importance, the fact that the Republic of New Granada, in proposing at Bogotá, on June 30, 1862, the settlement of the affair of which we are treating, in so far as one of the original republics of old Colombia was liable for the loan in question, it acknowledged interest at the rate of 6 per cent per annum to be just and equitable;

Considering that the loan negotiated by the Mexican Government, from which loan the £63,000 lent to Colombia were procured, bore interest at 6 per cent per annum, as the evidence shows;

Considering that Colombia paid interest at 6 per cent per annum upon the loan, for the payment of one of the installments of which Señor Hurtado asked and obtained from Señor Rocafuerte the loan of the £63,000;

Considering that several other loans which are shown in the evidence bore a like rate of interest;

Considering that the reason invoked by the agent of Venezuela, that the loan was stipulated to be without any interest according to the instrument establishing it, can not be considered in justice as discharging the obligation to pay interest, because it is not permissible to infer that the contracting parties desired to extend this stipulation to the failure to fulfill the agreement;

Considering that the legal rate of interest which is actually in force in Venezuela, and which the Venezuelan Commissioner likewise invokes, can not serve as a guide for fixing the rate of interest on obligations contracted in the year 1823;

Considering that the rate of interest provided for in the loan negotiated by Mexico in the house of Barkley, Herring, Richardson & Co., from which the sum received by Colombia was taken, as is shown by the Rocafuerte-Hurtado contract, was 6 per cent per annum;

Considering finally that at the time when Colombia contracted the obligation it was a principle of justice, as it is to-day, according to the legislation of the most advanced nations, that the debtor is to be considered in default by the sole fact of the nonperformance of his obligation, without the necessity of making demand after the day of the expiration of the term allowed him;

By reason of the foregoing, which is proved by the evidence, it must be decided that Venezuela is obliged to make reparation to Mexico for the damages and injuries resulting from delay in the fulfillment of

its obligation, by paying interest at the rate of 6 per cent per annum, upon the original capital of the debt, counting from the 7th day of October, 1827.

CLAIMS OF THE GOVERNMENT OF VENEZUELA.

I. Question. Payment in compensation for the sum unlawfully collected by New Spain, now Mexico, for import duties on cocoa coming from Caracas, Maracaibo, and Guayaquil.

The Government of Venezuela claims from the Government of Mexico the amount of certain duties unlawfully collected on the importation of cocoa coming from Caracas, Maracaibo, and Guayaquil, and the Commissioner of Mexico accredited to this Commission rejects the demand, relying in so doing upon proofs and public documents which are to be found in the record.

Considering that the agent of Venezuela, in his argument of July 11 of the present year, adopts the report of the solicitor of the public treasury, Mr. Juan Bautista Calcaño, addressed to the minister of state in the department of the treasury of Venezuela, relative to the claim of Messrs. Martinez del Rio Hermanos, and that in this report Doctor Calcaño admits that it is not possible to present this claim in proper form because it is not possible to fix the amount thereof;

Considering that the claim concerning this cocoa belongs to individuals whose nationality is unknown and whose heirs are likewise unknown;

Considering that Messrs. Martinez del Rio Hermanos are not liable except for debts against Mexico which are of an international character;

Considering that in official documents published by the department of foreign relations of Venezuela, which are to be found in the record, the Government of said Republic acknowledges that the claim concerning which there is question is not invested with the aforesaid international character;

Considering, finally, that the Government of Venezuela has not been able to produce proofs of the validity of this debt;

On account of all the foregoing the umpire decides that there is no reason for indemnity, and that Messrs. Martinez del Rio Hermanos are released from all liability in this respect.

2. Question. Compensation for the value of the ship and cargo of the schooner *Carmen*, the prize Colombian cruiser *Zulmé*, deposited in the treasury of the port of Campeche.

The proofs and documents relative to this matter having been examined, and

Considering that the value of the ship and cargo of the schooner *Carmen*, deposited in the treasury of the port of Campeche, is the property of individuals, because the value of prizes belongs by law to the privateer which captures them;

Considering that the existence of said owner is not known, and that neither he nor his heirs, if there be any, have claimed anything upon this particular from the Republic of Mexico;

Considering that in this case the claim is not of an international character, which is an indispensable requisite for its validity;

On account of the foregoing, the umpire decides that no indemnity

is due, and that Messrs. Martinez del Rio Hermanos are released from all liability in this respect.

3. Question. The return of 8,500 pesos fuertes delivered by Colombia in March, 1829, to the chargé d'affaires of Mexico, Col. Anastacio Torrens.

It appears established by the evidence that the two interested Governments agree concerning the validity of this debt.

Considering that Venezuela only has a right to 28½ per cent of the aforesaid amount;

It is ordered, adjudged, and decreed that Messrs. Martinez del Rio Hermanos are obliged to pay to Venezuela the sum of 28½ per cent of 8,500 pesos fuertes, or, say, 2,422.50 pesos fuertes.

4. Question. Payment for the naval aid agreed on by Mexico and Colombia for the capture of San Juan de Ulúa.

The agent of Venezuela maintains (adopting, as his report of the solicitor of the treasury, Doctor Calcaño) that by virtue of Article II of the convention, made on the 19th of August, 1825, by Señor Torrens, minister plenipotentiary of Mexico, relative to the naval aid destined to cooperate in the capture of the Fortress of San Juan de Ulúa, the Government of Mexico obligated itself to pay the expenses which said aid might occasion until forty days after the surrender of said fort, or for a longer time if by common accord it were found necessary, and, relying on this obligation, he presents the account of the expenses, which is to be found in the record; and

Considering that Article II, relied on, formally establishes that the obligation to pay this expense should begin to run "from the day on which each of the auxiliary ships should leave the ports of Colombia bound for the Gulf of Mexico;"

And it appearing in the proofs that none of the Colombian ships complied with this indispensable requisite;

Considering that the account presented by the Government of Venezuela concerning said naval expenses of the Colombian squadron are not accompanied by proofs in any way appreciable in justice;

Considering that it appears from the correspondence exchanged between the high officials of Colombia and Mexico, respectively, that up to the 21st of January, 1826, these countries considered the agreement to furnish naval aid to Mexico was dissolved;

Considering, finally, that the surrender of the fort of Ulúa, which was the object for which the squadron was destined, was accomplished by Mexico without the help agreed on with Colombia;

For these reasons the umpire decides that there is no reason for indemnity, and that Messrs. Martinez del Rio Hermanos are released from all liability in this respect.

Concluding the examination of each and all of the questions submitted for his decision, and taking into account the reasons and declarations which precede, the undersigned, the umpire, decides that he must decree, and he does hereby decree, that the Government of the United States of Venezuela is obliged to indemnify the successors of Messrs. Martinez del Rio Hermanos, in payment of the claim presented in their name by the Governor of the United States of Mexico, in the sum which may result from a liquidation in the following manner:

1. For 28½ per cent which is due from Venezuela of the sum of £6,300, considered as the original capital of the loan delivered to

Colombia by virtue of the Rocafuerte-Hurtado contract, dated at London, April 7, 1826, £17,955.

2. For interest on the original capital, that is to say, £17,955, from October 7, 1827, until October 2, 1903, £81,859.50.

3. For indemnity for the damages and injuries caused by the bonus of 13¼ per cent, which the above-mentioned £17,955 cost Mexico, £2,742.40.

4. Messrs. Martinez del Rio Hermanos shall credit the Government of Venezuela for 28½ per cent of the 8,500 pesos fuertes paid by the Governor of Colombia on March 6, 1829, which belongs to it, $2,422.50, or, say, £484.50.

LIQUIDATION.

Original capital	£17,955.00
Interest at 6 per cent per annum for 75 years 360 days	81,859.50
Indemnity for damages and injuries	2,742.40
Total	102,556.90
Less the sum delivered Señor Torrens	484.50
Balance	102,072.40

It follows, therefore, from the preceding liquidation that the Government of Venezuela is obligated to pay Messrs. Martinez del Rio Hermanos as a final balance for claims and counterclaims respectively presented to this Commission by the countries interested the sum of £102,072.40 in American gold, or its equivalent in silver, as provided in the last paragraph of article 1 of the protocol of Washington of February 26 of the present year.

SUMMARY OF CLAIMS.

[CLAIMS AGAINST VENEZUELA.]

There was only one claim presented to the Commission.

Amount of claim		£114,575.85
Amount allowed	£102,072.40	
Disallowed	12,503.45	
		114,575.85

[CLAIMS AGAINST MEXICO.[a]]

Number of claims submitted		4
Number of claims in which awards were given	1	
Number of claims disallowed	3	
		4
Amount of claims presented not fixed, but amounted to more than		Bolivars. 296,434.22
	Bolivars.	
Amount of claims in which awards were given	12,112.50	
Amount of claims disallowed more than	284,321.72	
		296,434.22

[a] In this Commission claims on behalf of Venezuela were presented against Mexico in accordance with permission obtained. (See umpire's opinion, p. 883.)

NETHERLANDS-VENEZUELAN MIXED CLAIMS COMMISSION.

PROTOCOL, FEBRUARY 28, 1903

Protocol van Overeenkomst tusschen den Gevolmachtigde van Hare Majesteit de Koningin der Nederlanden en den Gevolmachtigde van de Republiek Venezuela tot het onderwerpen aan arbitrage en tot betaling van alle onafgedane vorderingen van de Nederlandsche onderdanen op de Republiek Venezuela.

Hare Majesteit de Koningin der Nederlanden en de President der Republiek Venezuela, het noodig geoordeeld hebbende bovenbedoeld protocol te sluiten, hebben te dien einde tot Hunne Gevolmachtigden benoemd, te weten:

Hare Majesteit de Koningin der Nederlanden, W. A. F. Baron Gevers, en de President van Venezuela, den Heer Herbert W. Bowen, die, na elkander hunne respective volmachten te hebben medegedeeld, welke in goeden en behoorlijken vorm zijn bevonden, het zijn eens geworden over en hebben geteekend het navolgend protocol:

ARTIKEL I.

Alle vorderingen bezeten door de Regeering of burgers der Nederlanden op de Republiek Venezuela, ten opzichte waarvan geen beslissing is genomen bij diplomatieke overeenkomst of arbitrage tusschen de beide Regeeringen en welke zullen worden aangeboden aan de hierna te noemen Commissie door het Departement van Buitenlandsche Zaken te 's Gravenhage of Harer Majesteit's Gezantschap te Caracas, zullen worden onderzocht en berecht door eene Gemengde Commissie,

Protocol of an Agreement between the Plenipotentiary of Her Majesty, the Queen of the Netherlands, and the Plenipotentiary of Venezuela for submission to arbitration and payment of all unsettled claims of the Government and subjects of the Netherlands against the Republic of Venezuela.

Her Majesty the Queen of the Netherlands and the President of the Republic of Venezuela, having deemed it expedient to conclude the above-mentioned protocol, have to that end appointed as their Plenipotentiaries:

Her Majesty the Queen of the Netherlands, Baron W. A. F. Gevers, and the President of Venezuela, Herbert W. Bowen, who, after having communicated to each other their respective Full Powers, found in due form, have agreed upon and signed the following protocol:

ARTICLE I.

All claims owned by the Government or citizens of the Netherlands against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the Commission hereinafter named, by the Department of Foreign Affairs at The Hague or Her Majesty's Legation at Caracas, shall be examined and decided by a Mixed Commission, which shall sit at Caracas, and which shall consist

die zal zitting nemen te Caracas en die bestaan zal uit twee leden, een waarvan zal worden benoemd door Hare Majesteit de Koningin der Nederlanden en de andere door den President van Venezuela.

Het is overeengekomen, dat een derde scheidsrechter zal benoemd worden door den President der Vereenigde Staten van Noord-Amerika.

Indien een der beide commissieleden of de derde scheidsrechter in gebreke zou blijven of ophouden werkzaam te zijn, zoo zal zijn opvolger zonder verwijl benoemd worden op dezelfde wijze als diens voorganger. Bedoelde commissieleden en de derde scheidsrechter moeten benoemd worden vóór den eersten Mei 1903.

De commissieleden en de derde scheidsrechter zullen te zamen komen in der stad Caracas op den eersten Juni 1903. De derde scheidsrechter zal bij hunne beraadslagingen voorzitten en zal bevoegd zijn elke vraag te beslissen waarover de commissieleden mochten oneenig zijn. Alvorens hunne werkzaamheden te aanvaarden zullen de commissieleden en de derde scheidsrechter bij een plechtigen eed zweren of plechtig beloven, dat zij zorgvuldig zullen onderzoeken en onpartijdig zullen berechten, overeenkomstig rechtvaardigheid en de termen dezer overeenkomst, aale vorderingen welke hun zullen worden voorgelegd, en genoemde eeden of beloften zullen worden opgenomen in de processen-verbaal van hunne verrichtingen. De commissieleden, of, ingeval deze het niet kunnen eens worden, de derde scheidsrechter zullen alle vorderingen berechten op een grondslag van volksterkte billijkheid, zonder te letten op tegenwerpingen van technische natuur of ontleend aan de bepalingen van locale wetgeving.

of two members, one of whom is to be appointed by Her Majesty the Queen of the Netherlands and the other by the President of Venezuela.

It is agreed that an umpire shall be named by the President of the United States of America.

If either of the said commissioners or the umpire shall fail or cease to act, his successor shall be appointed forthwith in the same manner as his predecessor. Said commissioners and umpire are to be appointed before the first day of May 1903.

The commissioners and the umpire shall meet in the City of Caracas on the first of June 1903. The umpire shall preside over their deliberations, and shall be competent to decide any question on which the commissioners disagree. Before assuming the functions of their office the commissioners and the umpire shall take solemn oath, or solemnly promise to examine and impartially decide, according to justice and the provisions of this convention, all claims submitted to them, and such oaths or promises shall be entered on the record of their proceedings. The commissioners, or in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or the provisions of local legislation.

De beslissingen van de commissie en, in geval zij het niet eens kan worden, die van den derden scheidsrechter zullen zijn eindbeslissingen in laatste instantie. Zij zullen worden op schrift gebracht. Alle erkende vorderingen zullen betaalbaar worden gesteld in goud der Vereenigde Staten of deszelfs equivalent in zilver.

The decisions of the commission and in the event of their disagreement those of the umpire, shall be final and conclusive. They shall be in writing. All awards shall be made payable in United States gold or its equivalent in silver.

ARTIKEL II.

De commissieleden of derde scheidsrechter, naar gelang der omstandigheden, zullen bedoelde vorderingen onderzoeken en berechten op grond alleen van zoodanige bewijzen of inlichtingen als verstrekt zullen worden door of ten behoeve der respectieve Regeeringen. Zij zullen verplicht zijn te ontvangen en in overweging te nemen alle geschreven stukken of verklaringen, welke hun door of ten behoeve van de respectieve Regeeringen zullen worden aangeboden tot staving van of in antwoord op eenige vordering, en van mondelinge of geschreven bewijsvoeringen aangevoerd door den Vertegenwoordiger van elk der Regeeringen ten opzichte van elke vordering. Ingeval zij het niet eens kunnen worden over eenige speciale vordering, zal de derde scheidsman beslissen.

Elke vordering zal in alle formen aan de commissieleden worden aangeboden binnen dertig dagen van den dag van hunne eerste samenkomst, tenzij de commissieleden of de derde scheidsrechter, in eenig geval, den termijn tot het aanbieden van de vordering verlengen tot hoogstens drie maanden langer. De commissieleden zullen verplicht zijn elke vordering te onderzoeken en te berechten binnen zes maanden, te rekenen van den dag waarop zij in

ARTICLE II.

The commissioners or umpire, as the case may be, shall investigate and decide said claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of their respective Governments in support of or in answer to any claim, and to hear oral or written arguments made by the agent of each Government on every claim. In case of their failure to agree in opinion upon any individual claim, the umpire shall decide.

Every claim shall be formally presented to the commissioners within thirty days from the date of their first meeting, unless the commissioners or the umpire in any case extend the period for presenting the claim, not exceeding three months longer. The commissioners shall be bound to examine and decide upon every claim within six months from the day of its first formal presentation, and in case of their disagreement the umpire shall examine and de-

alle formen zal zijn aangeboden, en indien zij het niet eens kunnen worden, zal de derde scheidsrechter onderzoeken en berechten binnen een gelijken termijn, te rekenen van af den datum waarop de commissieleden bleken het niet eens te kunnen worden.

cide within a corresponding period from the date of such disagreement.

ARTIKEL III.

De commissieleden en de derde scheidsrechter zullen een nauwkeurig proces-verbaal van hunne verrichtingen houden. Tot dat doeleinde zal elk commissielid een secretaris benoemen, die de taal van beide landen grondig kent, ten einde hem bij het afdoen der werkzaamheden van de commissie bij te staan. Behoudens hetgeen in deze overeenkomst is vastgesteld, zullen alle procedure-quaesties ter beslechting aan de commissie worden overgelaten, of, in geval dat zij het niet eens wordt, aan den scheidsrechter.

ARTICLE III.

The commissioners and the umpire shall keep an accurate record of their proceedings. For that purpose each commissioner shall appoint a secretary versed in the languages of both countries, to assist them in the transaction of the business of procedure. Except as herein stipulated, all questions of procedure shall be left to the determination of the commission, or in case of their disagreement, to the umpire.

ARTIKEL IV.

Redelijke vergoeding voor de commissieleden en voor den derden scheidsrechter voor hunne diensten en uitgaven en voor de overige kosten van bedoelde arbitrage zullen worden betaald in gelijke helften door de contracteerende partijen.

ARTICLE IV.

Reasonable compensation to the commissioners and the umpire for their services and expenses, and other expenses of said arbitration, are to be paid in equal moieties by the contracting parties.

ARTIKEL V.

Ten einde het totaal-bedrag der vorderingen, welke als bovenbedoeld zullen zijn toegewezen, en andere vorderingen van burgers of onderdanen van andere natiën te betalen, zal de Regeering van Venezuela tot dit doel afzonderen, in maandelijksche stortingen, en tot geen ander doel vervreemden, van af de maand Maart 1903, dertig procent van de opbrengst der inkomende rechten van La Guaira en Puerto Cabello en de

ARTICLE V.

In order to pay the total amount of the claims to be adjudicated as aforesaid, and other claims of citizens or subjects of other nations the Government of Venezuela shall set apart for this purpose, and alienate to no other purpose, beginning with the month of March, 1903, thirty per cent. in monthly payments, of the customs revenues of La Guaira and Puerto Cabello, and the payments thus set aside shall be divided and distributed in

stortingen, aldus ter zijde gesteld, zullen worden verdeeld en uitgedeeld overeenkomstig de beslissing van het Haagsche Hof.

Ingeval dat met het ten uitvoer brengen van bovenstaande overeenkomst mocht worden in gebreke gebleven, zullen Belgische ambtenaren belast worden met de heffing der invoerrechten van de twee havens en zullen zij die beheeren tot dat de verplichtingen van de Venezolaansche Regeering met betrekking tot bovenbedoelde vorderingen zullen zijn afgedaan. Het aanhangig maken van bovenbedoeld punt bij het Haagsche Hof zal onderwerp uitmaken van een afzonderlijk protocol.

conformity with the decision of the Hague Tribunal.

In case of the failure to carry out the above agreement, Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government in respect of the above claims shall have been discharged. The reference of the question above stated to the Hague Tribunal will be the subject of a separate protocol.

ARTIKEL VI.

Alle bestaande en onafgedane erkende vorderingen ten gunste van Nederland of Nederlandsche burgers zullen, zonder verwijl, overeenkomstig de termen dier respective vonderingen, worden betaald.

ARTICLE VI.

All existing and unsatisfied awards in favor of the Netherlands or Netherlands citizens shall be promptly paid, according to the terms of the respective awards.

WASHINGTON, D. C., *February 28, 1903.*

GEVERS. [SEAL.]
HERBERT W. BOWEN. [SEAL.]

PERSONNEL OF THE NETHERLANDS-VENEZUELAN COMMISSION.

Umpire.—Frank Plumley, of Northfield, Vt.
Netherlands Commissioner.—N. J. Hellmund, who was succeeded by J. Möller.
Venezuelan Commissioner.—José Vicente Iribarren.
Netherlands Secretary.—C. S. Gorsira, E. S.
Venezuelan Secretary.—Delicio Abzueta.
Umpire's Secretary.—J. Earl Parker, of Washington, D. C.
Netherlands Agent.—W. T. Sherman Doyle, of Washington, D. C.
Venezuelan Agents.—F. Arroyo-Parejo and José I. Arnal.

RULES OF NETHERLANDS-VENEZUELAN COMMISSION.

I.

All claims will be presented to the Commission by the Government of the Netherlands through its representative and will be presented

within the time specified in the protocol. If possible, the presentation will be by way of a memorial in each case, accompanied by all documents and proofs. For cause shown, to prevent a failure of justice, a memorial may also be waived by the Commission and the time extended beyond the thirty days first named in the protocol. In lieu of the memorial in such case there must be a concise statement of the facts constituting such claim.

II.

All documentary and other evidence presented for the consideration of the Commission will be in the language of the Government presenting the same and in Spanish, accompanied if possible by translations into English.

III.

Each memorial or statement will specify as far as possible with precision the sum claimed and the grounds thereof, and may also state the claim as to interest, and will clearly state the currency in which the damages are calculated. Whether interest will be allowed in a given case, and if allowed, at what rate per cent., will be determined by the commissioners if they agree; and if they do not agree, it may be referred to the umpire.

IV.

When a memorial, or statement, is presented a written receipt will be given by the secretaries to the representative presenting the same. It will then be inscribed in the proper register, a note being made by the secretaries on the memorial, or statement, of the date of its receipt and number.

V.

The Venezuelan representative of record will have the right within five days after the presentation of any claim to indicate whether he intends to oppose it upon the question of fact or law, or both; and in the absence of such indications within such time, or before with the consent of the commissioners, the Commission may proceed to the disposition thereof. If the Venezuelan representative decides within the time stated above to oppose the claim upon the question of fact, he may have twenty days after the presentation of such claim to answer the same in writing, presenting with his answer such proofs and counterproofs as he may think relevant, producing all necessary documents. Such answer will be presented and registered as provided in Section IV, and notice thereof given to the representative of the Netherlands. In case the opposition of the Venezuelan Government is based on the insufficiency of the documents presented, the representative of the Netherlands Government will be so informed and a suitable time will be allowed him in which to present the required documents.

VI.

The Netherlands representive, or the person whom he will appoint as agent to support the Netherlands claims before the Mixed Commission, will have the right within five days after the presentation of the

answer of the Venezuelan Government in any case to indicate whether he will join issue upon the memorial and answer, or desires to make reply to such answer. If he does not indicate his desire within such time to make reply, at the expiration of the said five days, or before with the consent of the commissioners, the Commission may proceed to dispose thereof. If the Netherlands representative, or above-named agent, decides within the time stated above to make a reply to such answer, he may have twenty days from the date of the presentation of such answer in which to make such reply, either verbally or in writing, accompanied by the proper translations and proofs. Such reply will be presented and registered as provided in Section IV, and notice thereof given to the representative of the Venezuelan Government.

VII.

The Venezuelan representative may have five days after the presentation of such reply in which to decide whether he desires to make a written or verbal reply thereto, or to submit his case on the papers as they then stand. If he does not indicate his desire within the time stated above to make such counter reply, at the expiration of the said five days, or before with the consent of the commissioners, the Commission may proceed to dispose thereof. If the Venezuelan representative decides within the time stated above to make a counter reply to such replication, he may have twenty days from the date of the presentation of such replication in which to make his counter reply in writing or verbally, accompanied by the proper translations and proofs. Such counter reply will be presented and registered as provided in Section IV, and notice thereof given to the representative of the Netherlands, or his agent.

VIII.

When the issue is formed in either of the ways suggested in the foregoing sections, the secretaries will forthwith inscribe the claims for hearing, giving immediate notice thereof to the representatives of both Governments. The tribunal will then fix a date for the hearing.

IX.

The umpire will be present at all formal meetings of the Commission, and his decision upon any point necessary for the progress of the case may be invoked at any stage of the proceedings. His decision when thus invoked will be entered in the records of the proceedings.

X.

After hearing the case, if the commissioners are agreed, the tribunal may give its decision as soon as the same can be put in writing. If the commissioners disagree, but mutually consider that further consideration is necessary, the tribunal may order such further investigation, fixing the time and place therefor, and if the commissioners are then agreed, the decision may be rendered as provided in the first part of this section.

XI.

No one may attend the sittings of the tribunal except the agents or other representatives of their respective Governments, the official secretaries, and the secretary to the umpire, the claimants or their representatives, and such other persons as first obtain the authorization of the tribunal either verbally or in writing.

XII.

The secretaries will keep, besides the register mentioned in Section IV, a book in which they will enter a record of the proceedings and the decisions of the tribunal in each case, and another in which they shall enter the minutes of the sittings. These books will be kept in duplicate, one copy in Dutch and the other in Spanish, and will be verified, approved, and signed from time to time by the tribunal.

XIII.

The representative or agent of the respective Governments will have the right at any time before a case is taken up for final consideration to present oral or written arguments in connection therewith, but no person will be entitled to recognition before the Commission except such representative or agent.

XIV.

The secretaries will be charged with the custody of all records submitted to them, and will not deliver them to anyone save the members of the Commission, taking his receipt therefor. All papers will be indorsed by them with the date of filing. If, at any time, the Government submitting the same shall demand it, it will be entitled to receive from the secretaries a copy duly certified by them of any documents or papers filed before the Commission. Documents belonging to the archives of either the Dutch legation or the Venezuelan Government and presented to substantiate any claim shall, however, remain in the custody of the parties who have presented them.

XV.

All documents and records shall be considered confidential.

OPINIONS IN THE NETHERLANDS-VENEZUELAN COMMISSION.

J. N. Henriquez Case.

In accordance with the accepted principles of international law, to hold a government responsible for the seizure of goods or property such seizure must be made by the government itself, through its proper authorities, or by those who had a right to act in its name or behalf; it must be made by some one having authority to express the governmental will and purpose.

A government can not be held responsible for contract obligations incurred by the authorities of an unsuccessful revolution.

A government to be considered a de facto government must be one that is recognized as the ruling or supreme power. It is not one temporarily in authority in a district or state in revolution against the de facto and de jure government of the nation.

The Government of Venezuela is responsible to aliens, commorant or resident, for injuries they receive in its territory from insurgents or revolutionists whom the Government could control and not otherwise. That the Government was negligent in a given case must be alleged and proved.

PLUMLEY, *Umpire:*

In this case the commissioners failed to agree, and it came to the umpire for his opinion and decision.

The umpire finds that the claimant was the sole owner of the firm of Henriquez, Cadet & Co., doing business as a merchant under that name in the city of Coro, capital of the State of Falcón, Republic of Venezuela, and that he was a subject of the Netherlands, at and during the time of the happening of the events herein complained of.

His claim is for the sum of 19,250 bolivars.

The sum of 13,513 bolivars and 4 centimos was for goods and cash voluntarily loaned or delivered to revolutionary chiefs or their official subordinates, commencing with the so-called de facto government of General Rivera, in the State of Falcón, in June, 1902.

The sum of 5,737.20 bolivars is for cash and goods—mostly cash—furnished the present Government from November, 1899, to June, 1900. This sum is admitted to be lawfully due from the Republic of Venezuela to the claimant.

It is not questioned by either party that General Rivera was in control of that portion of the Republic of Venezuela of which the claimant was an inhabitant during the time mentioned, and that he was a revolutionary chieftain warring against the constitutional Government. Neither party questions that it was a revolution in fact, nor that the funds and effects furnished General Rivera and his subordinates went for the support and the benefit of the revolutionary forces only. But the claimant insists that it was the de facto government of the State of Falcón; that he was obliged to recognize its authority, and that, being a de facto government, the Republic of Venezuela is responsible for the loans and goods furnished to the superior powers then in control of that State. It is not claimed, however, that General Rivera held any office de facto or de jure under the authority or by the consent of the Republic of Venezuela. Indeed, it is recognized and admitted that such government as there was under him was in direct opposition to the constitutional Government, and was seeking the life of that Government. So far from having the authority to pledge the Government of the Republic of Venezuela for moneys or goods, every dollar received in value by General Rivera was to be used for the destruction of the Government, which it is now sought to charge with its payment. There is no claim or proof that the loan of the money or the delivery of the goods was in fact compulsory. It was placed upon other grounds. If, however, the claimant had been compelled to pay out this money and to deliver the effects mentioned, under such circumstances that in law it would amount to the seizure of them by General Rivera, or his subordinate officers, it would not then occupy such relation to the constitutional Government as would require its payment out of the treasury of such Government.

The umpire has already held in the case of James Crossman *v.* the Republic of Venezuela,[a] in the British Mixed Commission, now sitting

[a] Page 298.

in Caracas, that to hold the Government of Venezuela responsible for seizure of goods or property, it must be made by the Venezuelan Government through its proper authorities or by those who had a right to act in the name of and on behalf of the Government of Venezuela; that it must be done by some one having authority to express the governmental will and purpose. Such, in the opinion of the umpire, is the inflexible rule of international law as held by text writers, and by courts and mixed commissions, in all cases where the revolution or insurrection had passed beyond the control of the Government.

Wharton's International Law Digest, sec. 223, quoted in Moore, 2951:

The sovereign is responsible to alien residents for injuries they receive in his territory from belligerent action or from insurgents whom he could control. * * *

Hall's International Law, 4th ed., pages 231–2 lays down the law as follows:

When a government is temporarily unable to control the acts of private persons within its dominions, owing to insurrection or civil commotion, it is not responsible for injury which may be received by foreign subjects in their person or property in the course of the struggle, either through the measures which it may be obliged to take for the recovery of its authority, or through acts done by the part of the population which has broken loose from control. When strangers enter a State they must be prepared for the risks of intestine war, because the occurrence is one over which from the nature of the case the Government can have no control; and they can not demand compensation for losses or injuries received, both because, unless it can be shown that a State is not reasonably well ordered, it is not bound to do more for foreigners than for its own subjects, and no government compensates its subjects for losses or injuries suffered in the course of civil commotions, and because the highest interests of the State itself are too deeply involved in the avoidance of such commotions to allow the supposition to be entertained that they have been caused by carelessness on its part which would affect it with responsibility toward a foreign State.

Ralston, umpire, in the case of Sambiaggio *v.* Venezuela, before the Italian-Venezuelan Mixed Commission, now sitting in Caracas, held upon this question in part as follows:[a]

1. Revolutionists are not the agents of government, and a natural responsibility does not exist.
2. Their acts are committed to destroy the government, and no one should be held responsible for the acts of an enemy attempting his life.
3. The revolutionists were beyond governmental control, and the Government can not be held responsible for injuries committed by those who have escaped its restraint.

Duffield, umpire, in the case of Kummerow *v.* Venezuela, before the German-Venezuelan Mixed Commission, late sitting in Caracas, concerning the late civil war in Venezuela, held as follows:[b]

From its outset it went beyond the power of the Government to control * * *. Under such circumstances it would be contrary to established principles of international law, and to justice and equity, to hold the Government responsible.

See decisions of Thornton, umpire, in the United States-Mexican Commission, Moore's International Arbitration, pages 2977–8–9–80. See the United States-Spanish Commission of 1871, Ib. pages 2981–2. See United States and British Claims Commission of 1871, Ib. 2982, 2987, 2989. See United States-Mexican Commission of 1849, Ib. page 2972. See United States-Mexican Claims Commission of 1868, Ib. pages 2973, 2902, 2900. See also Ib. pages 2900–2901.

Such would be the position of the present claim if the claimant was allowed to be considered as one having suffered from the taking or

[a] Page 680. [b] Page 559.

seizure of his property and goods by force and against his will. This is the strongest position to which his claim can be assigned, and if in that position it is not well founded much less could it be when resting upon a basis of contract voluntarily entered into between him and those who as revolutionists had received his money and goods. As resting on such voluntary contract it would have no standing whatever before this Commission. Hence, in placing his claim for the purpose of investigation upon the same ground as though the property had been seized or forcibly taken, it is being considered from the best point of advantage possible to be given it.

A de facto government which would give this claim a position before this Commission must be one recognized as such for the Republic of Venezuela, and not one temporarily in authority in a State or district under revolution and against the will and purpose of the de jure and de facto government of the nation. Such a rule may work occasional hardship in the individual case, but it is the unvarying rule of international law, and taken as a whole works beneficially to the nation at large. Insurrections and revolutions are to be deplored, and the cases of especial hardship resulting within the territory subject to such conditions may call for sympathy, but they can have no right of compensation from the national treasury. Insurrections and revolutions more than all other forms of belligerency are always against the will of the constituted government and originate without its ability in any way to prevent them. To hold the Government responsible for the means by which its life is sought would be destructive of all governmental conditions.

Austin speaks of it [a government de facto] as one which presumably commands the habitual respect and obedience of the bulk of the people.

Halleck describes it as a government submitted to by the great body of the people and recognized by other States. (Halleck, p. 127.)

* * * * * * *

It has been held in England that the courts of that country will not take notice of a foreign government not recognized by the Government of Great Britain. (City of Berne *v.* Bank of England, 9 Ves., 347.)

The Supreme Court of the United States in noting the features by which a government de facto is to be discriminated, mentions as one of these, recognition by a foreign power. (Thorington *v.* Smith, 8 Wallace, p. 9.)

This power has been elsewhere styled the ruling—the "supreme power" of the country. (Nesbitt *v.* Lushington, 4 Term, 763.)

(See Moore's Int. Arb., pp. 3553–3554.)

While the government of General Rivera might have been a de facto government for certain municipal purposes within the State or District, when, for the time his was the supreme force he had power to compel respect and obedience, it lacked all of the characteristics of a de facto national government that could speak and act in the name of Venezuela.

The umpire holds concerning the responsibility of Venezuela for the acts of unsuccessful revolutionists that the Government of Venezuela is responsible to aliens, commorant or resident, for injuries they receive in its territory from insurgents or revolutionists whom the Government could control, and not otherwise. That the Government of Venezuela was negligent in a given case must be alleged and proved.

So held by the present umpire[a] in the case of the Aroa Mines, Lim-

[a] Page 344.

ited, supplementary claim, recently decided by him in the British Mixed Commission, now sitting in Caracas.

See authorities supra. Also see the treaties of Italy-Venezuela, 1861;[a] Italy-Colombia, 1892; Spain-Venezuela, 1861;[b] Spain-Ecuador, 1888;[c] Spain-Honduras, 1895; Belgium-Venezuela, 1884;[d] France-Mexico, 1886;[e] France-Colombia, 1892;[f] Germany-Mexico; San Salvador-Venezuela, 1883.[g]

These are identical in principle with the one between Germany and Colombia of date 1892, which is here quoted:

> It is also stipulated between the contracting parties that the German Government will not attempt to hold the Colombian Government responsible, unless there is due want of diligence on the part of the Colombian authorities or their agents, for the injuries, vexations, or exactions occasioned in time of insurrection or civil war to German subjects in the territory of Colombia, through rebels, or caused by savage tribes beyond the control of the Government.

The umpire allows the sum of 6,164 bolivars, which is the sum of 5,737.20 bolivars for which he holds the Government of Venezuela responsible, including interest for two years and six months at 3 per cent, and disallows the claim of 13,513.04 bolivars, and judgment may be entered accordingly.

Bembelista Case.

No compensation will be allowed for injuries received in the course of battle, and in the rightful and successful endeavor of the Government to repossess itself of one of its important towns.

It will always be presumed that the Government will be careful in the direction of the fire of the troops.

The general rule is that the bombardment of an open city is not admissible.

Plumley, *Umpire:*

This case came to the umpire on the disagreement of the Commissioners.

This claim is founded upon injuries to the claimant's dwelling house, furniture, and ware service by the Government troops in the engagement which took place at Puerto Cabello on the 11th day of November, 1899, which damages the claimant estimates at 1,900 bolivars.

The proofs show that the house was situated about 12 meters distant from one of the intrenchments of that town, and that it sustained serious injuries by the bullets during the severe fight which resulted in the taking of said town by the Government forces under the command of Gen. Ramón Guerra, the town being defended by the troops under General Paredes. The proofs further show that this house was at one of the points where the attack upon the town had been most formidable.

There seems to be no question as to the facts being as alleged by the claimant, but these facts indisputably show that the injuries complained of were received at a time and under such conditions as to forbid any recovery from the Government by the claimant. His injuries were received in the course of battle and in the rightful and

---

[a] British Foreign and State Papers, Vol. 54, p. 1330.
[b] Idem, Vol. 53, p. 1050.
[c] Idem, Vol. 79, p. 632.
[d] Idem, Vol. 75, p. 39.
[e] Idem, Vol. 77, p. 1090.
[f] Idem, Vol. 84, p. 137.
[g] Idem, Vol. 74, p. 298.

successful endeavor of the Government to repossess itself of one of its important towns and ports. The Government owed a duty to the claimant and to all the inhabitants of Puerto Cabello to become the government in fact of the town in question. And as their repossession of it was resisted by the troops then in charge it became the due course of war to take and carry the intrenchments of the town. It was the misfortune of the claimant that his building was so near to one of the principal intrenchments, where there was the most serious resistance, and the injuries occasioned his property were one of the ordinary incidents of battle. Had his property been situated in such a part of the town as was out of the line of the intrenchments and the usual and proper course of battle, the case would be different. There is always a presumption in favor of the Government that it will be reasonable and will not be reckless and careless, and in this case the facts proven prevent any possible removal of that presumption. The Government bullets were directed toward the place required to insure success, and that there was so far a misdirection of those bullets as to do harm to his property located in such close proximity was a mere accident attending the rightful performance of a solemn duty. The most careful inspection of the case shows nothing that puts this property within the list of exceptional instances, but rather they all place it in the immediate line of battle, and in the very track of flagrant war.

The rules laid down concerning bombardment, in article 32 of the Manual of the Institute of International Law, are in part as follows:

> It is forbidden:
> (*a*) To destroy private or public property if that destruction is not compelled by the imperious necessity of war.
> (*b*) To attack and bombard localities which are not defended.

The destruction of these intrenchments and the carrying of the town by the Government troops were compelled by the imperious necessity of war. The intrenchments and the town were defended. The better rule seems to be that the bombardment of an open city—that is to say, one which is not defended by fortifications or other means of attack or resistance for immediate defense, or by detached forts situated in its proximity—for instance, at a maximum distance of 4 to 10 kilometers—is inadmissible in ordinary cases. But an unfortified town may be bombarded for the purpose of quelling armed resistance. Since this was a fortified town, of course the rule prohibiting bombardment in general does not apply, and if the bombardment of unfortified towns were permissible under the circumstances named, much more would it be true that towns intrenched, as was Puerto Cabello at the time complained of, might be attacked and bombarded without just cause of complaint.

It was held in Cleworth's case, American and British Claims Commission, Moore, 3675, that the value of a house destroyed in Vicksburg by shells thrown into the city by the United States forces during bombardment could not be recovered against the United States. This was the unanimous opinion of the Mixed Commission. So held in Dutrieux's case, Moore, 3702, Commission under convention between the United States and France, January 15, 1880. The claimant was the owner of two houses at Charleston, S. C. These houses were injured by shells striking them during the bombardment of that city by the United States. This case was carefully discussed and ably considered, and in the end the claim was disallowed.

In Lawrence on International Law, page 443, quoting from Brussel's Code, articles 15–17, Manual of the Institute of International Law articles 31–34, it is stated that—

Even in bombardments it is now deemed necessary to spare as far as possible churches, museums, and hospitals, and not to direct the artillery upon the quarters inhabited by civilians unless it is impossible to avoid them in firing at the fortifications and military buildings.

Lawrence, says, page 344:

But had the guns of the besiegers been deliberately turned upon the dwelling houses of the bombarded town, or had an open and undefended village been fired into, the person responsible for such proceedings would have been justly accused of barbarity forbidden by modern usage.

Wharton, volume 3, sec. 349, page 338, says:

The bombardment of unfortified towns is not permitted by the law of nations. (See Calvo, 3d ed., vol. ii, 137.) An exception to this rule is recognized in cases where the inhabitants of an unfortified city oppose by barricades and other hostile works, the entrance of the enemy's army, or wantonly proceed in the destruction of his property and refuse redress.

Lawrence's report, page 274:[a]

The American rule of international law was early adopted, that the Government was under no obligation to compensate its citizens for property destroyed or damages done in battle, or by necessary military operations in repelling an invading enemy.

And ibid, page 275:

No government, but for a special favor, has ever paid for property, even of its own citizens, destroyed in its own country, on attacking or defending itself against a common public enemy, much less is any government obliged to pay for property belonging to neutrals domiciled in the country of its enemy which may possibly be destroyed by its forces in their operations against such enemy. (Citing Perrin *v.* U. S., 4 C. Cls., 547.)

Mr. Seward, Secretary of State, said, in relation to a claim upon the United States by a French subject for property destroyed by the bombardment of Greytown, in July, 1854, that "the British Government, upon the advice of the law officers of the Crown, declared to Parliament its inability to prosecute similar claims. In 1857 Lord Palmerston applied the decision in the case of Greytown as a precedent for refusing compensation to British merchants whose property in a Russian port had been destroyed by a British squadron during the Crimean war. (See note in Lawrence's Wheaton, p. 145.)

"The governments of Austria and Russia have applied the doctrine involved in the Greytown case to the claims of British subjects injured by belligerent operations in Italy in 1849 and 1850. (See note p. 49, vol. 2, of Vattel, Guilaumin & Co.'s edition, 1863.)

"We have applied the same principle in declining to make reclamations for citizens of the United States whose property was destroyed in the bombardment of Valparaiso by a Spanish fleet, and in resisting the claims of subjects of neutral powers who sustained injury from our military operations in the Southern States during the recent rebellion. It will probably be found a sufficient answer to the reclamations of many of our citizens who have sustained losses from belligerent operations on both sides during the recent occupation of Mexico by French troops."

This is the rule recognized by Vattel, who says: "But there are other damages caused by inevitable necessity; as, for instance, the destruction caused by the artillery in retaking a town from the enemy. These are merely accidents. They are misfortunes which chance deals out to the proprietors on whom they happen to fall. * * * No action lies against the State for misfortunes of this nature, for losses which she has occasioned, not willfully but through necessity and by mere accident, in the exertion of her rights." (Vattel, book 3, ch. xv, sec. 232, p. 403.)

The umpire has made careful examination of nearly all of the international law text-books, and finds the principles herein laid down to receive their unqualified sanction. Hence he is compelled to say that

[a] H. R. Report 134, 43d Cong., 2d sess.

in this case there is no just ground for complaint against the Venezuelan Government and no claim thereon arises because of the injuries received.

The claim is disallowed, and judgment may be entered accordingly.

SALAS CASE.

The Government of Venezuela is responsible to aliens, commorant or residents, for injuries they receive in its territory from insurgents whom the Government could control and not otherwise. That the Government of Venezuela was negligent in a given case must be alleged and proved.[a]

PLUMLEY, *Umpire:*

In this case the commissioners failed to agree and it came to the umpire for his decision.

The claimant is a Dutch subject resident at Barquisimeto. He claims an amount of 26,906 bolivars on account of damages upon his buildings and the personal property therein contained, which he sustained during the siege of Barquisimeto by the revolutionary troops under Gen. Luciano Mendoza in the month of June, 1902.

There seems to be no dispute concerning the facts, and they are substantially as follows: That the injuries and losses to the claimant occurred at the time when Barquisimeto was besieged by revolutionary forces; that during the besiegement the mercantile establishment of the claimant was occupied by these forces; the merchandise and furnishings of his store were taken and carried away by them, also a large deposit of stamps and national stamp paper, and the money in the drawer, as well as his account books, which were in the safe of said establishment, which safe was broken open; that starting from the partition wall between the house of the claimant and the one inhabited by one of the witnesses, and continuing up to the room where the office of Mr. Salas was kept, there were evident signs of walls and doors having been broken; the stands, wardrobes, and shelves of his lemonade factory were destroyed; the furniture generally broken; some excavations were made in the floor of the building, and there were places in the walls made to be used by the soldiery of the revolutionary army through which to fire their arms; all his mercantile stock and his machines for the manufacture of lemonade and gaseous waters were destroyed, and everything about the building was left in a decided ruin.

There is no claim that any injury was received to the buildings or property from the Government troops, which had been occupying the town, and which fought to maintain their possession thereof, but the proof is that all of the injury was caused by the voluntary acts of the revolutionary troops during their successful attack upon the city. As a result of this attack the Government troops were driven out of the city and the revolutionary forces were the victors and occupied the city for some time thereafter.

While the attack upon Barquisimeto was successful and the revolutionary party for the time became the dominent force in that immediate vicinity, the revolution itself was unsuccessful. There can be

---

[a] See Sambiaggio case, p. 666; Aroa Mines case, p. 344; Kummerow case, p. 526; J. N. Henriquez case, p. 896.

no question that the injuries were received from the hands of revolutionary soldiers, who for the time being and within that city were beyond the control of the Government. The Government in fact was defeated and was driven out of the city, so that in no way can it be held that they could have prevented these acts, and they can not be charged with a neglect of duty in not having done what they could not do.

The case comes clearly within the rule prescribed by the umpire in the case of J. N. Henriquez[a] (No. 1), concerning the responsibility of Venezuela for the acts of unsuccessful revolutionists:

That the Government of Venezuela is responsible to aliens, commorant or resident, for injuries they receive in its territory from insurgents or revolutionists whom the Government could control and not otherwise. That the Government of Venezuela was negligent in a given case must be alleged and proved.

The opinion of the umpire in the Henriquez case may be examined for the authorities there cited or quoted sustaining this proposition.

The claim is disallowed, and judgment may be entered accordingly.

EVERTSZ CASE.

By article II of the protocol the Commission is bound to receive and consider all evidence whether taken ex parte and without notice or not.[b]

The Venezuelan Government held liable to indemnify claimant for property taken for the maintenance of prisoners left on claimant's estate [an island] without claimant's permission and without food.

Damages awarded for the property taken or destroyed at the price fixed by claimant. Claimant had the right to fix any price not extortionate if property was taken without his consent.

PLUMLEY, *Umpire:*

This case came to the umpire for his consideration and decision upon the disagreement of the honorable commissioners.

Before entering upon the consideration of the case proper, it seems wise to look first at the contention of the learned agent for Venezuela, who objects that the testimony presented on the part of the claimant Government can not be accepted as proof of any fact because taken in foreign parts and ex parte. While testimony prepared in the absence of the other party, without giving them an opportunity to elucidate the facts by cross-examination, would not have the evidential force which it otherwise would have, and while testimony so taken without due and reasonable notice to the opposing party of the time and place of such taking might be refused admission into courts controlled by definitive or restrictive rules and statutes covering such matters, yet here it must be both received and considered, however adduced or obtained, in virtue of the specific provision in that regard found in article II of the Netherlands-Venezuelan protocol of February 28, 1903, which protocol is the perfect law of this tribunal. It is there stated:

* * * They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of or in answer to any claim. * * *

---

[a] Page 896 and cases therein referred to.

[b] See Faber case, p. 600 and note.

The probative force of the testimony presented is for the tribunal to determine, but that it must be received and considered is settled in advance.

Having determined that the evidence must be considered and weighed, it is next to determine what facts are to be found therefrom. If the testimony introduced on behalf of the claimant were in any material part untrue, it concerns facts so lately within the knowledge of the respondent Government, and its opportunity for countervailing proof is apparently so perfect and immediate that the absence thereof is tantamount to the admission of the truth of the claimant's proof, and the umpire will deal with the case upon the assumption that the facts are as alleged.

It appears that the island of Orchila is a part of the territory of Colón, of the Republic of Venezuela; that in 1885 one Manuel Roblín assigned and transferred to Gen. Juaquín Crespo and Marco Julio Rivera the rights which he had previously acquired through a contract with the Venezuelan minister of fomento to burn lime and to raise cattle upon said island; that in August, 1890, Rivera ceded all his rights in the same to General Crespo, and, that on February 3, 1897, General Crespo sold outright to the claimant the cattle and dwelling house on said island and transferred to the claimant his usufructuary interest in said island for the term of fifteen years. These facts being admitted, it is not important to the determination of the questions here involved to study the especial terms of the original contract. It is enough for the umpire to know, what he finds to be true, that at the time of the happening of the events complained of the claimant was the lawful owner of the cattle and the boat in question and was in rightful and actual possession of the island.

Through the fortunes of war the respondent Government in January, 1902, found itself with certain military prisoners under its charge and within its control; through the fears or necessity of the respondent Government it had also in its control the persons of several of its citizens whom it deemed necessary to hold to insure its safety or welfare.

In accordance with what the umpire must assume was the wisdom of the respondent Government, it entered upon the deportation of these persons to the island of Orchila. As these persons were left on this island without any means of maintenance provided by the Government, it can not for a moment be assumed that the respondent Government was unaware of the fact that out of the cattle of the claimant they could obtain sustenance. Any other assumption is too contrary to the claims of humanity under the sway of christian civilization to be entertained. That their presence might be injurious otherwise to the rights of the claimant must have been in the mind of the respondent Government. There is no other rightful view of this act apparent to the umpire than that under the stress of its peculiar circumstances it decided to do as it did in full view of all the facts known and in full expectation of meeting and canceling all the obligations and consequences which might naturally flow from its acts.

As the case stands, the respondent Government must be held liable for the loss occasioned the claimant through the coast guard of the island of Orchila by the seizure and confiscation of the sloop of the claimant.

There is no suggestion by the learned agent for the respondent Government that the indemnity claimed is excessive, and since the claimant had no voice concerning the coming of these persons on to his estate and had no alternative in permitting his property to be taken for their maintenance, and since he was given no chance to decide concerning the taking and the selling of his boat, it is eminently just that he should name any price not extortionate for the losses incurred by him through the acts of the authorities of the respondent Government.

The umpire therefore finds for the claimant in the sum of $1,200 in the gold coin of the United States of America, or its equivalent in silver at the rate of exchange at the time of payment, and judgment may be entered accordingly.

BAASCH & RÖMER CASE.

The jurisdiction of an international claims commission over the claims of a corporation is controlled by the nationality of the corporation and not by the nationalty of the stockholders.[a]

Interest at the legal rate in Venezuela allowed on claims after the expiration of one year from the time that the Government is presumed to have had notice of them.

PLUMLEY, *Umpire:*

Messrs. Baasch & Römer, claimants, are successors of Messrs. Leseur, Römer & Co., which firm was composed of J. R. Leseur, M. A. Römer, H. A. Leseur, and E. Baasch. It is alleged and proven that the first three are Dutch subjects.

The claimants are liquidators of the firm of Leseur, Römer & Baasch, which firm was composed of J. R. Leseur, M. A. Römer, H. A. Leseur, H. G. Römer, O. Baasch, and O. E. Römer. It is alleged and proven that the first four are Dutch subjects.

On behalf of Leseur, Römer & Co. accounts against the respondent Government are set down as follows, viz:

July 7, 1892. Order No. 578, for 1,680 bolivars, drawn by the governor of the *Federal District* against the municipal revenues for wool stuff. The order states that it is by the authority of the President of the Republic and is for war uses. Frequent demands are asserted, but no payment made. Interest at 8 per cent is claimed. It is allowed with interest at 3 per cent after one year, amounting to *2,208.36 bolivars.* As three-fourths of the firm are proven to be of Dutch nationality this item is allowed to the claimants at 1,656.27 bolivars.

---

[a] This subject of the nationality of legal persons is at large discussed in an article by P. Arminjon in the Revue de Droit International, series 2, Vol. IV, 1902, page 381, the length of which precludes copying or even digesting it here. The subject is discussed under the following headlines, with the citations indicated:

I. Application of the idea of nationality to moral persons, citing—

Laurent, Principes de droit civil français, t. I, p. 404; Theorie und Praxis des internationalen Privatrechts, sec. 104, n. 1. Voir dans le même sens les auteurs cités par M. de Bar. Lyon-Caen et Renault s'expriment en termes presque identiques, Traité de droit commercial, t. II, sec. 1167. Dans son livre sur Les personnes morales, M. de Varellles-Sommières s'efforce de démontrer avec beaucoup de vigueur et de talent que "la personnalité morale n'étant qu'un résumé et une représentation (purement doctrinale d'après l'auteur) des associés. * * * n'a point de nationalité, car elle n'est qu'un procédé intellectuel, qu'une image dans notre cerveau * * * Seuls les associés ont une nationalité" (p. 645, no. 1503). Par contre, d'après M. Planiol, Traité de droit civil, t. I, sec. 2017-2019: "Les prétendues personnes morales n'ont pas de domicile, puisqu'elles ne vivent pas et que le domicile est avant tout le lieu d'habitation d'un être vivant." Au fond, ces théories qui prétendent ainsi rectifier le langage courant en refusant aux êtres de raison, les unes la nationalité, les autres le domicile, ne jouent-elles pas un peu sur les mots?

An account for 26,484.52 bolivars for supplies furnished the "national revolution" of 1892—a successful revolution. The time covered by these accounts was from December 9, 1892, to February 10, 1893. The documents proving these accounts were very early delivered to the "Board for the examination of credits for supplies to the national revolution," and they are still in the hands of the respondent Government although their return was twice requested by the claimants in writing. That they are not produced on request or in

---

Foot note continued.

II. Nationality of corporations—systems proposed—how is such nationality determined?

First system. The corporation takes its nationality from the state which authorizes its existence, citing—

Droit intern. privé, traduction Pradier-Fodéré, p. 688; idem., t. II, p. 150; Russian imperial decree of November 9, 1887; Annuaire de législ. étrang., 1889, p. 806. Sur la condition des sociétés étrangères, spécialement des sociétés françaises en Russie, voir J. Barkowski, Journ. de droit intern. privé, 1891, p. 712, et Winter-Haller, Journ. de droit intern. privé, 1898, p. 40 et suiv.; Journ. de droit intern. privé, 1888, p. 438; Royal imperial order of Austria, November 29, 1865; Roumanian Code of Commerce, article 244; Euclides, condition légale des sociétés de commerce étrangère en Grèce, Journ. de droit intern. Privé 1889, p. 59 et suiv. Code de commerce hellénique, art. 37; loi de 10 août 1881, art. 2.

Second system. The nationality of the corporation is determined by that of the country within whose jurisdiction it is constituted, citing—

Congrès des sociétés de 1889. Observations de M. Brunard, Compte rendu, p. 213; Congrès des sociétés de 1900. Observations de M. Cassano, Compte rendu, p. 291. Diverses décisions de jurisprudence qui visent presque toutes une constitution de société arguée de fraude semble admetire implicitement que le lieu de l'acte aurait pu servir à déterminer la nationalité sociale s'il avait été choisi de bonne foi: V. Tr. com. de la Seine, 17 novembre 1875; Clunet, 77, p. 45, et 10 février 1881: Clunet, 81, p. 158; Cass. (Ch. cr.), 21 novembre 1889; Clunet, 1889, p. 850. Tr. com de la Seine, 7 janvier 1891; Clunet, 92, p. 1026, et 22 octobre 1895; Clunet, 1896, p. 138. Gand, 21 avril 1876; Clunet, 76, p. 305. Cour d'Alexandrie, 12 décembre 1895; Clunet, 1896, p. 904; Clunet, 1888, p. 652. Observations de M. Larombière, Compte rendu de congrès de 1889, p. 230.

Third system. By the nationality of the stockholders, citing—

Vareilles-Sommières, Synthèse de droit international privé, t. II, p. 74. Les personnes morales, p. 645, sec. 1503 et s.; La synthèse de droit international privé, t. II, p. 78. En ce sens Brocher, I, 198. Tr. civil Seine, 26 mai 1884; Journ. de droit intern. privé, 1885, p. 192 et s. 88, 2, 89 (note de M. Chavegrin). Tribunal fédéral suisse, 11 novembre 1892; Journ. de droit intern. privé, 1894, p. 640. Cour d'Alexandrie, 11 mars 1899; B. L. J. ég., XI, p. 140. En sens contraire, tr. com du Havre, 3 février 1874 et tr. de Nancy, 16 avril 1883. S. 88, 2, 89, Tr. de com. Seine, 24 octobre 1895. Journ. de droit intern. privé, 1896, p. 138. Note précitée de M. Chavegrin. Cohendy, note sous D. P. 1890, 2, 1. Et les auteurs qui adoptent les systèmes dont il va être parlé.

Fourth system. That of the country where the stockholders reside, or which is the domicile of the majority of the stockholders at the time of their subscription, citing—

Annales de droit commercial, 1890, 2, 257 et s.

Fifth system. The nationality of the corporation is the same as that of the country where it has its principal place of business, citing—

Loi belge de 18 mai 1873, art. 128 et s.; code commercial italien, art 230; code de commerce portugais, art. 109–111, traduction, Lehr, p. 40–41; code de commerce roumain, art. 239. Acte 44 du 25 février 1889 de l'Etat de Nevada, Annuaire de lég. étr., 1890, p. 918. Circulaire de département fédéral suisse de justice et de police * * * concernant l'inscription au registre du commerce des sociétés commerciales étrangères. " * * * Il est d'usage d'inscrire dans le registre les succursales des sociétés étrangères * * * pourvu que ces sociétés soient valablement constituées au lieu de leur siège principal * * * Il convient de consacrer cet usage." Journ. de droit intern. privé, 1900, p. 443. Lyon-Caen, Journ. des sociétés, 1880, p. 36. Surville et Arthuys, Droit intern. privé, sec. 456. Weiss, p. 418–419. Asser et Rivier, Élém. de droit intern. privé, p. 197. Despagnet, Précis, sec. 64. Boistel, sec. 396. Gand, 18 février 1888. Pasicr. 1888, 2, 203. Traité de droit commercial, II, sec. 1167, p. 824. Lyon-Caen et Renault, op. cit. * * * II, sec. 1167.

Sixth system. The judge shall determine the nationality of the corporation in accordance with all the facts which have been enumerated, fortifying them, if necessary, with others, citing—

Lyon-Caen et Renault, Traité de droit commercial, t. II, sec. 1168. Maguero, Traité alphabétique des droits de l'enregistrement, cité par J. Robin, Régime des valeurs étrangères (thèse), p. 26. Cour de cassation, 30 juin 1870. D. 1870–1–416. Tout en admettant "en général" le critérium tiré de centre d'affaires, l'excellent Traité de droit international privé de M. Rolin semble incliner vers le système éclectique. Pour cet auteur "la question n'est pas susceptible d'une solution absolue" (t. III, sec. 1278). "Des sociétés constitués à l'étranger et fonctionnant en France" (Journal de droit international privé, 1875, p. 348). Surville et Arthuys, Cours de droit intern. privé, sec. 456: "Nous pensons qu'il est impossible de donner une règle générale et que l'on devra s'attacher à celui des deux établissements (le siège social ou le centre d'exploitation) qui doit être considéré en fait comme le principal."

opposition to the claim as made will be accepted by the umpire as proof that the claim is well founded as laid. Interest is claimed at 8 per cent, and is allowed at 3 per cent after July 10, 1894, amounting to *34,343.80 bolivars*. The claim is allowed at three-fourths of such sum, which is 25,757.85 bolivars.

An account of 1,385.72 bolivars for merchandise supplied to the

---

Foot note continued.

III. Solution of the problem. Intention of the parties as to the nationality that the corporation shall assume.

Brocher, Revue de droit intern., 1872, p. 189 et s., Cours de droit intern. privé, p. 315 et s.; Aubry, "Domaine de la loi d'autonomie" (Journ. de droit intern. privé, 1896, p. 465, 471); Vareilles-Sommières, Synthèse du droit intern. privé, t. I, sec. 396-402; Rolin, Principes de droit intern. privé, t. I, sec. 251-291. Varellles-Sommières, Synthèse, t. I, 247, sec. 401.

The nationality of the corporation follows that of the State whose territory is the center of its juridic existence, that is to say, that within the borders of which it carries on its activity and attains its end, in a word, as we have already established, that of its principal social and administrative seat, citing—

En ce sens, Cass., 24 juin 1880 S., 1881, 1, 130. Chavegrin, note S., 1888, 2, 89. Cohendy, note D., 1890, 2, 1. Pic., "Faillite des sociétés en droit international privé" (Journ. de droit intern. privé, 1892, p. 581-585). Tribunal de commerce de la Seine, 24 octobre, 1895; Journ. de droit intern. privé, 1896, p. 138. Cass. (Req.), 22 décembre 1896; Journ. de droit intern. privé, 1897, p. 364. Tr. Seine, 12 juillet 1897; Journ. de droit intern. privé, 1898, p. 341. Thaller, Traité, sec. 625. Bar, I, secs. 47, 104, et s. Dicey, Conflicts of Laws, pp. 151-156. Wharton, secs. 48a et 105. Chambéry, 1er déc. 1866, D., 66; 1, 246. Cass (Req.), 25 février, 1879, affaire du Crédit foncier suisse. Journ. de droit intern. privé, 1879, p. 396. Cour de cass. de Florence, 5 juin 1896, 25 juin 1896. Journ. de droit intern privé, 1899, p. 323.

IV. Concerning fraud, citing—

P. Pic., "Faillite des sociétés commerciales en droit international privé" (Journ. de droit intern. privé, 1892, p. 585). Wharton, Conflict of Laws, sec. 696. Thöl cité par Bar, sec. 122, n. 38. La loi, 27 mai 1899. Journ. de droit intern. privé, 1900, p. 802. Annales de droit commercial, 2, 1890, p. 257. Robin, Régime légal des valeurs mobilières étrangères (thèse), p. 38. Paris, 4 nov. 1886, S. 88, 2, 89, note de M. Chavegrin. Observations et amendements de M. Lebel, compte rendu sténographique, p. 368-370. C'est dans cette hypothèse d'un siége social fictif qu'ont été rendues les décisions suivantes qui déclarent nulle la société constituée en violation des lois du pays de son domicile véritable. Conseil fédéral suisse, 21 janvier 1875. Journ. de droit intern. privé, 1875, p. 80. Tr. de com. de la Seine, 27 août 1891. Journ. de droit intern. privé, 1891, p. 1241. Cass. (Req.), 22 décembre 1896. Journ. de droit intern. privé, 1897, p. 364.

V. Practical application of the freedom of the parties, saying—

Peut-on soutenir, par exemple, que la société qui revêt la nationalité de son centre d'opérations peut légitimement prétendre avoir intérêt à échapper aux impôts perçus seulement sur les sociétés nationales dans le pays où elle possède son domicile? Voir le rapport de M. Lyon-Caen à la session tenue à Hambourg, en 1897, par l'Institut de droit international. (Annuaire de 1891-92, p. 160.) Lyon-Caen et Renault, Traité de droit commercial, t. II, p. 824-825.

VI. Concerning the change of the corporate nationality, citing—

Aix, 30 janvier 1868; Sirey, 68, 2, 343; Cass., 17 juin 1880 (Journal de droit international privé, 1881, p. 262 et 263); tribunal de l'empire allemand, 5 juin 1882 (Journal de droit international privé, 1883, p. 315). Pineau, Des sociétés commerciales en droit international privé. Dans le même sens, Vavasseur, Des sociétés, sec. 957. Le jugement précité du tribunal de l'empire allemand exprime la même idée sous une forme un peu détournée. "Si les sociétés d'origine allemande, qui fixent leur siége à l'étranger, sont déchues de leurs droits, cela tient uniquement à ce que la perte de leur nationalité, si l'on peut ainsi s'exprimer, doit entraîner pour elles celle des privilèges que cette nationalité leur conférait. Il en résulte que le transport du siége social à l'étranger produit les mêmes effets." (Journal de droit international privé, 1883, p. 316, Laurent, Droit civil, t. I, p. 389. Ibid., loc. cit., p. 370. Note de M. Boistel, sous Paris, 6 décembre 1891. Dalloz, 1892, II, 385. Paris, 19 avril 1875. Dalloz, 1875, II, 161. Dalloz, 1893, I, 103, note. Voir aussi Dalloz, 1894, I, 313, note de M. Desjardins, sous cassation, 29 janvier 1894. Cassation, 26 novembre 1894 (Dalloz, 1895, I, 57); Amiens (chambres réunies), 29 juin 1895 (Journal de droit international privé, 1897, p. 158); Cassation, 29 mars 1898 (Journal de droit international privé, 1898, p. 758). Tribunal consulaire de France, à Constantinople, septembre 1899 (Journal de droit international privé, 1900, p. 657). Companies act de 1862, sec. 4. Consulter sur les Joint Stock Companies, l'excellent manuel de Jordan et Gore-Brown.

VII. Nationality of associations and endowments, saying—

La cour de cassation de Rome a eu l'occasion de proclamer dans un arrêt cité par le Journal de droit international privé, 1890, p. 739, "Qu'un ordre religieux, présentât-il un caractère d'universalité, comme celui des Jésuites, ne pouvait être, au point de vue des rapports de droit civil, considéré et traité comme constituant une personne morale universelle. * * * Par suite, pour tout ce qui concerne l'acquisition ou la possession des biens; l'ordre des Jésuites se résout en autant de personalités juridiques qu'il y a d'États dans lesquels il est reconnu." Geouffre de la Pradelle, des fondations (thèse), p. 8. L'auteur justifie par de solides raisons ce procédé "plus terne, moins pittoresque, que le second," mais, selon lui, plus simple, plus pratique, plus respectueux de la réalité. Les expériences, faites depuis quelques années semblent pourtant lui donner tort. Bien des fondations indépendantes de toute association fonctionnent actuellement en France et y donnent d'excellents résultats. Salefilles, Étude sur la théorie de l'obligation, 2e édition, p. 151. (Voir le code civil allemand, art. 80-88.) Truchy, Des fondations (thèse), p. 159. A parler rigoureusement, ni le trust ni le ouakf n'ont une véritable personnalité juridique. Ils n'en forment pas moins l'un et l'autre un ensemble de biens distinct du patrimoine du nazir ou de celui du trustee, et indépendant des changements subis par la personnalité de ces individus.

army May 10, 1892, under direction of its commander, and the bill vouched by him, and its payment ordered. The umpire understands that the army is national, not of the State, and hence he holds this claim properly chargeable to the National Government. Interest is demanded at 8 per cent, and is allowed at 3 per cent after May 10, 1893. He assumes that this claim was reported to the Government by the commander, as was his official duty to do, and the Government is allowed one year as a reasonable time in which to make payment. It amounts to *1,828.05 bolivars*. The claim is allowed for three-fourths of the foregoing, which is 1,371.04 bolivars.

The claimants are also liquidators of the extinct firm of Leseur, Römer & Baasch, which firm was composed of J. R. Leseur, M. A. Römer, H. A. Leseur, H. G. Römer, O. Baasch, and O. E. Römer.

It is alleged and proven that the first four are Dutch subjects.

The first item is for a document termed a bond issued by General Aquilino Juarez March 22, 1898, for 3,000 bolivars in recognition of a payment made to him by the extinct firm on account of the military necessities of the National Government. The document is proved and brought in to the Commission by the claimants. Interest is claimed at 8 per cent, and is allowed at 3 per cent after March 22, 1899. The same reasons apply here as in the last sum allowed and need not be repeated. It amounts to 3,429.75 bolivars. It is allowed at two-thirds of this amount, which is 2,286.50 bolivars.

A claim of 1,910 bolivars, based on an order of General Diego Bta. Ferrer, minister of war and marine, of date September 27, 1899, on the ministry of finance, for cash supplied by the extinct firm to General Juarez to ration the forces of the Government garrisoned at Barquisimeto. The order is produced and is in the hands of the Commission. Interest is claimed at 8 per cent, and is allowed at 3 per cent from its date, it being regarded by the umpire as a debt of which the financial department of the Government undoubtedly had immediate notice through the proper channels, and being also for cash, which relieved the Treasury of just so much of its burden. Interest, therefore, should begin at once. It amounts to *2,354.14 bolivars*. It is allowed at two-thirds that amount, which is 1,436.08 bolivars.

A claim of 2,200 bolivars, based on a certificate issued by the board for the examination and qualification of credits, approved by the minister of finance, of date July 26, 1901. The certificate is produced and is in the hands of the Commission. Interest at 8 per cent is claimed, but interest is allowed at 3 per cent from its date, for the same reason as named in the last claim. It amounts to *2,354.96 bolivars*. It is allowed at two-thirds of that amount, which is 1,569.96 bolivars.

A claim for the practical destruction of the plant of the Luz Electrica de Barquisimeto Company, a corporation with a paid-up capital of 240,000 bolivars, by troops in command of General Freites. The extinct firm of Leseur, Römer & Baasch held capital stock to the amount of 26,800 bolivars. The destruction of the plant bankrupted the company and they claim to recover for the full amount of the shares. It is not necessary to consider this claim further than to accede to the position taken by the learned agent of the respondent Government. It is a Venezuelan corporation created and existing under and by virtue of Venezuelan law and has its domicile in Venezuela. This Mixed Commission has no jurisdiction over the claim. It is the corporation whose property was injured. It may have a

rightful claim before Venezuelan courts, but it has no standing here. The shareholders being Dutch does not affect the question. The nationality of the corporation is the sole matter to be considered. This claim is therefore dismissed without prejudice.

The umpire holds for the purposes of this case that the two firms being extinct the claims may be allowed in proportion to the stated interest of the Dutch members thereof. He does this the more readily because there seems to be no question about the indebtedness of the National Government, and it at most means a payment in this way instead of some other and will be a cancellation of its indebtedness pro tanto, which indebtedness it must discharge in some manner. No inequity or injustice is therefore done, even if a technical mistake has been made.

SUMMARY.

	Bolivars.	
On account of extinct firm Leseur, Römer & Co	1,656.27 25,757.85 1,371.04	
Total		28,785.16
On account of extinct firm Leseur, Römer & Baasch	2,286.50 1,436.08 1,569.96	
Total		5,292.54
Total award		34,077.70

Judgment may be entered for the sum of $6,553.40 in the gold coin of the United States of America, or its equivalent in silver at the rate of exchange at the time of payment.

JACOB M. HENRIQUEZ CASE.

Claim dismissed for want of proof of nationality of other members of the firm and their respective interests therein.

Where in a pleading the respondent Government sets out that a firm is of Venezuelan origin and domicile, and no contradiction is interposed by the claimant Government, the claim will be dismissed for want of jurisdiction.

A government will not be held responsible for the wanton, reckless acts of unofficered troops.[a]

PLUMLEY, *Umpire:*

Upon the disagreement of the honorable commissioners this case came to the umpire for his consideration and determination.

This claimant appears before this Commission as a late member of the extinct firm of Jacob M. Henriquez & Co., merchants at Maracaibo, and asks compensation for the sacking of a store, by Government troops, belonging to said merchants in the parish of Nueva Era, in the jurisdiction of Betijogue, in the State of Trujillo. The sacking is alleged to have occurred on the 25th of August, 1899, by forces forming a part of the army commanded by Gen. Antonio Fernandez while the said troops were in possession and occupancy of the store building of these merchants, which occurred during the time that the troops were passing through the place. The goods were ironware, kept for the purposes of wholesale, and in addition to the sacking of the store it is claimed that the troops tore down the inclosure of the

[a] See Roberts case, p. 143, and Chilean Claims Commission (1901) Report, Bacigalupi case, No. 42.

yard and broke down the interior doors of the building, and that such goods as they did not take they left in ruin.

A careful examination of the proof offered does not disclose that any of this ironware was of such character as to be useful to the Government troops while en route or in garrison.

The nationality of Jacob M. Henriquez is fully established as being a Dutch subject, but no proof is offered of the nationality of the other members which comprised the firm or association prior to its extinction. Neither is there any proof offered nor any suggestion made as to the respective interests of the members constituting said firm or association, prior to its extinction, or subsequent thereto. No proof is offered and no claim, in terms, is made that the claimant is the lawful owner of all the rights of action, credits, and properties of said extinct firm or association. No proof is offered or claim made that the possession and occupancy of said store building was with the knowledge or in the presence or by command of the officers of the Government army. So far as the facts are stated it would appear more to be an unauthorized sacking and looting of the merchandise of the store than of any taking of the goods for the purposes and uses of the army by direction and through the approval of the Government officers. There is no proof that the injuries done to the building were in consequence of, or as an incident to, the occupancy of said building as a place of rendezvous under official orders, but it has more the appearance of reckless and undirected action of ungoverned soldiery.

Both the learned agent for the respondent Government and the honorable commissioner thereof assert as lawyers, and the latter with the added responsibility of his oath as such commissioner, that this association, or partnership, or mercantile establishment, by whatever name it may be called, was in fact and law, by virtue of the Venezuelan code governing such associations and establishments, of Venezuelan origin and domicile; that it is therefore not a Dutch citizen or subject, but Venezuelan, and hence this Commission has no jurisdiction over it or any claim which it may present or which may be presented for it. This claim of the Venezuelan Government, first appearing in due course through the answer of the learned agent, being subjected to the scrutiny and inspection of the learned agent for the claimant Government, was neither answered nor denied, but instead the said learned agent for the claimant Government renounced his right to make a reply thereto. Since this jurisdictional position of the learned agent for Venezuela is neither answered nor denied by the learned agent for the claimant Government, whose duty it was to make such denial or answer if such jurisdictional position was not properly taken, it is proper that the umpire should assume that it is not susceptible of answer or denial and is to be taken as in effect admitted. It is also true that it would be impossible for the umpire, under the facts stated by the claimant in his own declaration and in his proof, to award the claimant the whole of any sum which he might adjudge proper, and if not the whole then for the same want of proof the umpire could make no sensible division of said sum. If the contention of the respondent Government is to prevail, then the umpire has no jurisdiction over the question presented. If all these legal questions were susceptible of solution favorable to the claim of Mr. Henriquez, there is still left the fact that on the proof it is impossible to say that the goods taken and the injury done to the property of the

claimant was done under such circumstances as to entitle the claimant to an award. Since either one of these contentions being resolved in favor of the respondent Government would be a sufficient answer to the claim and an explicit denial of an award, it is the opinion of the umpire that this claim must be disallowed, and such may be the judgment entered.

ARENDS CASE

A government may bring to port vessel found within its territorial waters in order that a thorough investigation may be made concerning the ship, but in so doing the government is obliged to treat the master and crew with consideration and complete the investigation promptly.

PLUMLEY, *Umpire:*

Upon the disagreement of the honorable commissioners this case came to the umpire for his determination:

The salient facts succinctly stated are these: The claimant is a Dutch subject and a resident of the island of Aruba; that in March, 1897, he was the owner of the Dutch schooner *Jupiter*, Capt. Arnodus Rees. On the 15th of that month the captain, with five fishermen and a cook, left the port of Paardenbaar, of the island of Aruba, provided with a fishing permit on the high seas, in a westerly course from the island. They arrived at their destination and entered upon their purpose, but on the 19th, the Friday following, they found that the staves of one of their principal water casks had been broken and nearly all the water had leaked, and they had only two small barrels of water left. Not daring to remain longer on the high seas with so small a quantity of water, they set sail to return to the island of Aruba. After having unsuccessfully tacked during one day northwest of the island, on Saturday, the 20th of March, they sailed toward the south with the hope of finding better seas in which to navigate and the sooner reach their island. At about 11 o'clock of that night, while they were sailing toward the south, they were detained by the Venezuelan man-of-war *Mariscal de Ayacucho* in Venezuelan waters. The commander of the war vessel finding this ship in Venezuelan waters with nothing but a fishing permit for a different part of the seas determined, notwithstanding the explanation of the captain, to take the vessel in tow to La Vela de Coro, in the Republic of Venezuela, where they arrived at about 2 o'clock in the afternoon of the 22d of March. After their arrival at this port the captain was taken before the customs-house principal office at La Vela de Coro to be interrogated. Subsequently he was ordered not to leave the town and not to communicate with his vessel. It was on Wednesday following that the captain and the crew were all taken before the judge and there interrogated, after which they were given their liberty and permitted to return on board and to land their fish. On request of the captain the judge allowed him to sail out of the port on his giving surety for his ship, which he obtained. His official permit for fishing was not returned to him, although he asked for it, but he was given a document signed and sealed according to which he could sail without any objection. It appears that the water on board the *Jupiter* was all exhausted about 11 o'clock on the morning of the 22d; that the crew asked the customs guard left on board for some water, but it was not given them, and it was not until Tuesday morning—the next day—that another ship provided them with some water.

The owner of the ship claims 5,000 bolivars for the unlawful seizure and detention of his ship and of the crew and captain.

It is the opinion of the umpire that the captain was justified in taking the course he did in sailing south for better waters in which to navigate and the sooner return to the island of Aruba on account of the shortness of water, but that the misadventure of sailing into Venezuelan waters justified the commander of the man-of-war in making the investigation that he did; and on finding a ship in the waters of his country with no other reasons than those given and with only a fishing permit for another part of the sea, there was sufficient cause for him to take the ship in tow to the port where there was competent authority under Venezuelan law to interrogate the captain and his crew, examine their papers, and determine whether the ship was innocent in the waters of that country. This view of the case is especially enhanced by the well-known conditions concerning smuggling existing between the Dutch West Indies and the country of Venezuela, and the consequent increased care and caution necessary for an efficient execution of the duties of the officials whose duties are to prevent such offensive operations against the revenues of Venezuela. But it seems to the umpire that too long a time elapsed between the arrival of the ship in the port and the hearing of its officer and men and the examination of its papers. Arrived at 2 o'clock on the afternoon of the 22d, the examination might well have been had, the vessel relieved of its necessities in the way of water, and allowed to sail that same night. It was in fact detained without any explanation for such lapse of time until the 24th.

The treatment of the crew, who were refused their petition for water by the officer left in charge of their boat, is also an element proper to be considered, and by no inaction on the part of the Venezuelan authorities should they have been allowed to remain without water for about two days. This conduct is contrary to that spirit of commerce and amity which should exist between the two nations and their respective citizens under circumstances where the one is perforce dependent upon the action of the other. While the delay attendant upon the tow of the ship *Jupiter*, nearly two days, that they might explain its presence in Venezuelan waters was a necessary hardship following the misadventure to the captain of getting within those waters, although unintentionally, it was the duty of the officers in charge of the port having those matters in hand to give their immediate attention to this matter, and any delays beyond the necessary time for the conclusion of their labors was an unlawful detention of the vessel. The damages consequent upon the detention of this vessel are necessarily small, but it is the belief of the umpire that the respondent Government is willing to recognize its responsibility for the untoward act of its officers under such circumstances and to express to the sovereign and sister State, with which it is on terms of friendship and commerce, its regret for such acts in the only way that it can now be done, which is through the action of this Commission by an award on behalf of the claimant sufficient to make full amends for the unlawful delay.

In the opinion of the umpire this sum may be expressed in the sum of $100 in gold coin of the United States of America, or its equivalent in silver, at the current rate of exchange at the time of payment, and judgment may be entered for that amount.

MAAL CASE.

Every government has the right to exclude or expel foreigners from its territory if they are prejudicial to public order or the welfare of the state.[a]

Expulsion of a foreigner is justifiable only when his presence is detrimental to the welfare of the state, and when it is resorted to it must be accomplished with due regard to the convenience and personal and property interests of the person expelled.

The Government of Venezuela must stand sponsor for the acts of its officers no matter how odious these acts may be, and in the event that it is not shown that officers committing unwarranted offenses in the exercise of their duty have been reprimanded, punished, or discharged the Government will be condemned to pay a fitting indemnity to the person injured.

PLUMLEY, *Umpire:*

On the disagreement of the honorable commissioners this case came to the umpire for his consideration and determination.

The salient facts are that the claimant at the time of the happening of these events was a commercial traveler representing important houses in the United States of America and in Europe; that in the prosecution of his business he left Curaçao on the 9th of June, 1899, on the Red "D" Line steamship *Caracas*, bound for La Guaira and thence to the city of Caracas, there to attend to his duties as such commercial traveler. On the 10th of June he arrived at the port of La Guaira; had disembarked from the steamship *Caracas* and was about to enter the train for the city of Caracas when he was accosted by a Venezuelan citizen, who informed him that he was under arrest and that he must go with him to the port; that he was accompanied also by armed police. His trunks and baggage were opened and examined in the minutest detail. While thus under arrest he was subjected to the indignity of being stripped of all his clothing and made the subject of much mirth and laughter on the part of the bystanders; that he was later taken by order of the customs administrator to the civil chief of that city, who, after communicating by telephone with the President of the Republic, informed the claimant that he was suspected of being a conspirator against the Government of Venezuela and in the interest of revolutionists, and that he must at once reembark and leave the country of Venezuela not to return, and was conducted by this same posse to the steamship *Caracas*, where after much solicitation he was permitted to enter for his return trip to Curaçao. He claims large damages because of his arrest, the indignities which he suffered, and the delay which it brought about in his anticipated trip to Europe in the prosecution of his business enterprises, causing him the loss of much money. He denied at the time all connection with revolutionary matters incident to Venezuela and protested that he was utterly indifferent to the political conditions of this country. He makes full proof of his Holland citizenship, and the case is properly within the jurisdiction of this tribunal.

Notwithstanding the objections of the learned agent for Venzeuela, the umpire has found these facts from the testimony submitted by the claimant, and for the reasons governing him in so finding, he refers to his opinion delivered before this Commission in the claim of Carel de Haseth Evertsz, No. 12.[b]

There is no question in the mind of the umpire that the Government of Venezuela in a proper and lawful manner may exclude, or if need be, expel persons dangerous to the welfare of the country, and may exercise large discretionary powers in this regard. Countries differ

[a] See p. 696. [b] Page 904.

in their methods and means by which these matters are accomplished, but the right is inherent in all sovereign powers and is one of the attributes of sovereignty, since it exercises it rightfully only in a proper defense of the country from some danger anticipated or actual.

This Government could never give up the right of excluding foreigners whose presence they might deem a source of danger to the United States. (Mr. Everett, Sec. of State, to Mr. Mann, Dec. 13, 1852.) Wharton's Int. Law Dig., vol. 2, sec. 206, p. 516.

Every society possesses the undoubted right to determine who shall compose its members, and it is exercised by all nations both in peace and war. A memorable example of the exercise of this power in time of peace was the passage of the alien law of the United States in the year 1798. (Mr. Marcy, Sec. of State, to Mr. Fay, Mar. 22, 1856.) Ibid.

It may always be questionable whether a resort to this power is warranted by the circumstances, or what department of the Government is empowered to exert it; but there can be no doubt that it is possessed by all nations, and that each may decide for itself when the occasion arises demanding its exercise. (Supra, p. 517.)

This Government can not contest the right of foreign Governments to exclude, on police or other grounds, American citizens from their shores. (Mr. Frelinghuysen, Sec. of State, to Mr. Stillman, Aug. 3, 1882.) (Supra, p. 520.)

The umpire understands that by the laws, organic and civil, of Venezuela this power is lodged in the hands of the chief executive, who, acting under the methods laid down may expel one who is a menace to the Republic, if not domiciled by a two years' residence. It is historic that the date of this exclusion from Venezuela was within that period of Venezuela's national life when there were more than the ordinary hazards to the country from revolutionary actions and conspiracies, and it was undoubtedly necessary that the national Government should be on the alert to protect itself against such evils; and had the exclusion of the claimant been accomplished in a rightful manner without unnecessary indignity or hardship to him the umpire would feel constrained to disallow the claim.

The modern theory and the practice of Christian nations is believed to be founded on the principle that the expulsion of a foreigner is justified only when his presence is detrimental to the welfare of the State, and that when expulsion is resorted to as an extreme police measure it is to be accomplished with due regard to the convenience and the personal and property interests of the person expelled. (Sec. Olney in Hollander case in U. S. For. Rel. for 1895, p. 776; and also see page 801 same volume; these citations to be found in sec. 206, vol. 2, Wharton's Int. Law Dig.)

This is his grievance, and as to this I have to say that on general principles it is within the power of the German Government to make and enforce such a decree of expulsion, nor can this Government object, *unless the exclusion be enforced with undue harshness.* (Mr. Bayard, Sec. of State, to Mr. Pendleton, July 9, 1885.) Wharton's Int. Law Dig., vol. 2, p. 525, sec. 206.

Great Britain in 11th and 12th Vict. c. 20, and by Executive order in the United States, 19 Aug., 1861, during times in both countries of peculiar stress and danger, authority was given to exclude and to remove aliens and to require passports. (See supra, p. 528.)

There was no possible occasion for the public stripping, or private stripping in fact, of the claimant. It was not for the protection of Venezuela that he was compelled to suffer this indignity to his person and to his feelings. From all the proof he came here as a gentleman and was entitled throughout his examination and deportation to be treated as a gentleman, and whether we are to consider him as a gentleman or simply as a man his right to his own person and to his own undisturbed sensibilities is one of the first rights of freedom and one of the priceless privileges of liberty. The umpire has been taught to regard the person of another as something to be held sacred, and that

it could not be touched even in the lightest manner, in anger or without cause, against his consent, and if so done it is considered an assault for which damages must be given commensurate with the spirit and the character of the assault and the quality of the manhood represented in the individual thus assaulted. The umpire acquits the high authorities of the Government from any other purpose or thought than the mere exclusion of one regarded dangerous to the welfare of the Government, but the acts of their subordinates in the line of their authority, however odious their acts may be, the Government must stand sponsor for. And since there is no proof or suggestion that those in discharge of this important duty of the Government of Venezuela have been reprimanded, punished or discharged, the only way in which there can be an expression of regret on the part of the Government and a discharge of its duty toward the subject of a sovereign and a friendly State is by making an indemnity therefor in the way of money compensation. This must be of a sufficient sum to express its appreciation of the indignity practiced upon this subject and its high desire to fully discharge such obligation.

In the opinion of the umpire the respondent Government should be held to pay the claimant Government in the interest of and on behalf of the claimant, solely because of these indignities the sum of five hundred dollars in gold coin of the United States of America, or its equivalent in silver at the current rate of exchange at the time of payment; and judgment may be entered accordingly.

SUMMARY OF CLAIMS.

Number.	Name of claimant.	Amount claimed.	Amount disallowed.	Amount allowed with interest.	Remarks.
		Bolivars.	*Bolivars.*	*Bolivars.*	
1	J. N. Henriquez	19,250.24	13,086.26	6,163.98	Award by umpire.
2	Postal administration	102,725.69		107,135.18	
3	J. Dania Bembelista	1,900.00	1,900.00		Do.
4	B. Eduardo Correa	2,858.00	2,254.80	603.20	
5	Luis de Pool	53,495.56	43,095.56	10,400.00	
6	Ysaac Chapman	61,934.10	59,999.96	1,934.14	
7	Karl Bellanciba Cecilia	12,000.00	7,996.00	4,004.00	
8	Jacob Salas	26,906.00	26,906.00		Do.
9	Rachel López	15,667.00	5,787.00	9,880.00	
10	Rosa Vivas	6,500.00	6,500.00		
11	Tomás J. Chapman	60,000.00	55,840.00	4,160.00	
12	Karel de Haseth Evertsz	6,240.00		6,240.00	Do.
13	Rafael Cohen Henriquez	13,530.00	10.00	13,520.00	
14	Baasch & Römer	69,880.92	35,803.24	34,077.68	Do.
15	W. Chapman	39,505.32	39,505.32		
16	B. J. Jesurum	76,060.00	76,060.00		
17	Jacob Salas	50,000.00	50,000.00		
18	Baasch & Römer	7,632.91	6,062.51	1,570.40	
19	J. H. Da Costa Gómez	5,760.00		5,761.60	
20	Jacob Henriquez	4,520.00	4,520.00		Do.
21	F. Philippus Verheltz	22,696.00	10,216.00	12,480.00	
22	Juan B. Capriles	1,582.00	1,192.00	390.00	
23	Henriqueta Fimmer de Peña	4,080.00	4,080.00		
24	Margarita Kociman	5,000.00	5,000.00		
25	Jacobo Bta. Arends	5,000.00	4,480.00	520.00	Do.
26	Postal administration of Curaçao	294,828.57		302,061.29	
27	Salomón Senior	3,893,967.64			Withdrawn.
28	The Netherlands Government for the ships Antonieta, Nueva Adelaida, Cármen Dionisia, Estelita y Phosfato	50,000.00	29,200.00	20,800.00	
29	Eduardo B. Capriles	279,000.00			
30	Arnold Jacob Maal	50,000.00	47,400.00	2,600.00	Award by umpire.
	Total	5,242,519.95	536,894.65	544,301.47	

SPANISH-VENEZUELAN MIXED CLAIMS COMMISSION.[a]

PROTOCOL, APRIL 2, 1903.

Protocolo del Convenio entre el Plenipotenciario de la República de Venezuela y el Enviado Extraordinario y Ministro Plenipotenciario de Su Majestad el Rey de España, para someter á arbitraje todas las reclamaciones no ajustadas, de súbditos españoles, contra la República de Venezuela.

La República de Venezuela y Su Majestad el Rey de España, por medio de sus representantes, Herbert W. Bowen, Plenipotenciario de la República de Venezuela, y el Excelentísimo Señor Don Emilio de Ojeda, Enviado Extraordinario y Ministro Plenipotenciario en Washington, han convenido y firmado el siguiente Protocolo:

ARTÍCULO I.

Todas las reclamaciones en posesión legal de súbditos de Su Majestad el Rey de España contra la República de Venezuela, que no han sido ajustadas por convenio diplomático ó por arbitraje entre ambos Gobiernos y que han de ser presentadas á la comisión mencionada más adelante, por el Gobierno de Su Majestad el Rey de España ó su Legación en Caracas, serán examinadas y resueltas por una Comisión Mixta, que se

Protocol of an Agreement between the Plenipotentiary of the Republic of Venezuela and the Envoy Extraordinary and Minister Plenipotentiary of His Majesty, the King of Spain, for submission to arbitation of all unsettled claims of Spanish subjects against the Republic of Venezuela.

The Republic of Venezuela and His Majesty, the King of Spain, through their representatives, Herbert W. Bowen, Plenipotentiary of the Republic of Venezula, and His Excellency, Emilio de Ojeda, Envoy Extraordinary and Minister Plenipotentiary in Washington, have agreed upon and signed the following protocol:

ARTICLE I.

All claims owned by subjects of His Majesty, the King of Spain, against the Republic of Venezuala which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the commission hereinafter named by the Government of His Majesty, the King of Spain, or his Legation at Caracas, shall be examined and decided by a Mixed Commission, which shall sit

[a] No rules of procedure were formulated in this Commission.

reunirá en Caracas, y que consistirá en dos miembros, uno de los cuales será nombrado por el Presidente de Venezuela y el otro por Su Majestad el Rey de España.

Queda convenido que un tercero será nombrado por el Presidente de la República Mexicana. Si uno ú otro de dichos comisionados, ó el tercero, dejaren ó cesaren de ejercer sus funciones, su sucesor será nombrado inmediatamente de la misma manera que su predecesor. Dichos comisionados y el tercero deben ser nombrados antes del 1° de mayo de 1903.

Los comisionados y el tercero se reunirán en la Ciudad de Caracas, el día primero de junio de 1903. El tercero presidirá sus deliberaciones, y tendrá competencia para decidir cualquiera cuestión en que no estén de acuerdo los comisionados. Antes de entrar á ejercer las funciones de su cargo los comisionados y el tercero prestarán juramento solemne de examinar cuidadosamente y decidir con imparcialidad conforme á justicia y á los disposiciones de este convenio, todas las reclamaciones que les sean sometidas y dicho juramento será consignado en el registro de actas de las conferencias. Los comisionados, ó, en caso de desacuerdo, el tercero, fallarán todas las reclamaciones basándose en un criterio de absoluta equidad, sin tomar en cuenta objeciones de carácter técnico, ó lo dispuesto por la legislación local.

Las decisiones de la comisión, y en caso de su desacuerdo, las del tercero, serán definitivas y ejecutorias y consignadas por escrito. Todas las indemnizaciones serán pagaderas en oro español ó su equivalente en plata.

at Caracas, and which shall consist of two members, one of whom is to be appointed by the President of Venezuela and the other, by his Majesty, the King of Spain.

It is agreed that an umpire may be named by the President of the Republic of Mexico. If either of said commissioners, or the umpire, should fail or cease to act, his successor shall be appointed forthwith in the same manner as his predecessor. Said commissioners and umpire shall be appointed before the first day of May, 1903.

The commissioners and the umpire shall meet in the City of Caracas on the first day of June, 1903. The umpire shall preside over their deliberations, and shall be competent to decide any question on which the commissioners disagree. Before assuming the functions of their office, the commissioners and the umpire shall take solemn oath carefully to examine and impartially decide, according to justice and the provisions of this convention, all claims submitted to them, and such oaths shall be entered on the record of their proceedings. The commissioners, or in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature, or of the provisions of local legislation.

The decisions of the commission, and in the event of their disagreement, those of the umpire, shall be final and conclusive. They shall be in writing. All awards made shall be payable in Spanish gold or its equivalent in silver.

ARTÍCULO II.

Los comisionados ó el tercero, según sea el caso, examinarán y

ARTICLE II.

The commissioners, or, umpire, as the case may be, shall investi-

resolverán las reclamaciones, sin tener en cuenta otra prueba, ó informe, que los que sean suministrados por los Gobiernos respectivos ó á nombre de ellos. Están en la obligación de recibir y considerar todos los documentos ó declaraciones por escrito, que les sean presentados por los Gobiernos respectivos ó á nombre de éstos, en apoyo de ó contestación á cualquiera reclamación, y á oir los argumentos orales ó por escrito que haga el agente de cada Gobierno, sobre cada reclamación. En caso de que no haya conformidad en el acuerdo respecto de cualquiera reclamación especial, el tercero decidirá.

Cada reclamación será presentada formalmente á los comisionados dentro de treinta días á contar desde el de su primera reunión, á menos que los comisionados ó el tercero prorroguen en algún caso el plazo para presentar la reclamación, el cual no deberá exceder de tres meses adicionales. Los comisionados estarán en el deber de examinar y fallar cada reclamación dentro de seis meses contados desde el día de su primera presentación formal, y, en caso de desacuerdo, el tercero examinará y decidirá dentro de un nuevo plazo de seis meses á contar desde la fecha de dicho desacuerdo.

gate and decide said claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective governments in support of or in answer to any claim, and to hear oral or written arguments made by the agent of each Government on every claim. In case of their failure to agree in opinion upon any individual claim, the umpire shall decide.

Every claim shall be formally presented to the commissioners within thirty days from the date of their first meeting, unless the commissioners or the umpire in any case extend the period for presenting the claim not exceeding three months longer. The commissioners shall be bound to examine and decide every claim within six months from the date of its first formal presentation, and in case of their disagreement, the umpire shall examine and decide within a corresponding period from the date of such disagreement.

ARTÍCULO III.

Los comisionados y el tercero llevarán un registro exacto de actas de las sesiones. Á este fin, cada comisionado nombrará un secretario, que lo ayude á despachar los negocios de la comisión. Excepto en lo que aquí se estipula, toda cuestión de procedimiento será determinada á juicio de la comisión, ó al tercero en caso de desacuerdo.

ARTICLE III.

The commissioners and the umpire shall keep an accurate record of their proceedings. For that purpose, each commissioner shall appoint a secretary versed in the language of both governments, to assist them in the transaction of the business of the commission. Except as hereinafter stipulated, all questions of procedure shall be left to the determination of the commission, or in case of their disagreement, to the umpire.

ARTÍCULO IV.

Las partes contratantes pagarán por iguales partes una compensación razonable, á los comisionados y al tercero por sus servicios y gastos, así como por otros gastos que dicho arbitraje ocasione.

ARTÍCULO V.

Para pagar la totalidad de las reclamaciones que han de ser fallados, como queda dicho, y otras reclamaciones de ciudadanos ó súbditos de otras naciones, el Gobierno de Venezuela destinará á este fin, y no enajenará con ningún otro objeto, á contar del mes de marzo de 1903, el treinta por ciento, en pagos mensuales, de los ingresos de las aduanas de La Guaira y Puerto Cabello, y las cantidades así reservadas serán divididas y distribuidas en conformidad con lo que decida el Tribunal de La Haya.

En caso de que no se cumpla el convenio que precede, las aduanas de los dos puertos serán intervenidas por funcionarios Belgas, quienes las administrarán hasta que haya cesado la responsabilidad del Gobierno de Venezuela resultante de las ante dichas reclamaciones. Los términos y condiciones en que habrá de ser sometida al Tribunal de La Haya la cuestión mencionada, será materia de un Protocolo especial.

ARTÍCULO VI.

Todos los fallos y decisiones yá obtenidos en favor de España que existen y no han sido satisfechos, serán pagadas prontamente de acuerdo con los términos de los fallos y decisiones respectivos.

Hecho por duplicado, en la Ciudad de Washington, el dos de abril de 1903.

ARTICLE IV.

Reasonable compensation to the commissioners and to the umpire for their services and expenses, and the other expenses of said arbitration, are to be paid in equal moieties by the contracting parties.

ARTICLE V.

In order to pay the total amount of the claims to be adjudicated as aforesaid, and other claims of citizens or subjects or other nations, the government of Venezuela shall set aside for this purpose, and alienate to no other purpose, beginning with the month of March, 1903, thirty per cent. in monthly payments of the customs-revenues of La Guaira and Puerto Cabello, and the payments thus set aside shall be divided and distributed in conformity with the decisions of the Hague Tribunal.

In case of failure to carry out the above agreement, Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of Venezuela in respect to the above claims shall have been discharged. The reference of the question above stated to the Hague Tribunal will be the subject of a separate protocol.

ARTICLE VI.

All existing and unsatisfied awards in favor of Spain shall be promptly paid in accordance with the terms of the respective awards.

Done in duplicate in the City of Washington on the second day of April, 1903.

HERBERT W. BOWEN [SEAL]
EMILIO DE OJEDA. [SEAL]

PERSONNEL OF SPANISH-VENEZUELAN COMMISSION.

Umpire.—Luis Gutierrez-Otero, of Mexico City, Mexico.
Spanish Commissioner.—Juan Riaño, Chargé d'Affaires at Washington, D. C.
Venezuelan Commissioner.—F. N. Guzmán Alfaro.
Spanish Agent.—Aristides Tello.
Venezuelan Agent.—F. Arroyo-Parejo.
Assistant Venezuelan Agent.—José T. Arnal.
Spanish Secretary.—José Gil Delgado y Olazábal.
Venezuelan Secretary.—Luis Julio Blanco.

OPINIONS IN THE SPANISH-VENEZUELAN COMMISSION.

Extension of Time for Submission of Claims.

Under the terms of the protocol no general extension can be allowed for the presentation of claims; but on cause shown any particular claim may be admitted for consideration and decision for ninety days after the time set for its presentation under the protocol.

Gutierrez-Otero, *Umpire:*

The umpire, having examined and reached a decision concerning the point on which the Commissioners have disagreed, relative to the extension of time which the Legation of His Catholic Majesty in Venezuela demands for the presentation of claims of Spanish subjects to this Mixed Commission;

Has decided that a general decision, which would permit the presentation of *any* claim without exception after thirty days, and during the three months additional, to which the second clause of the protocol refers, would not be compatible with a true interpretation of the protocol in question;

Nor could the decision be made limiting its effects to claimants who reside in the State or territory of Venezuela where a difficulty or lack of communication exists, which is considered sufficient to prevent their presentation during the first thirty days, since there is no reliable information upon which to base such a finding; besides this means might not always be in accord with absolute equity, which ought to control the decisions of the Commission.

But as equity demands—and it is universally recognized as justice—that the length of time granted for the exercise of a right should be sufficient and should be properly taken advantage of by the interested parties, it is certain, that in accordance with the proper interpretation of the protocol and the motive of its execution, the Commission may receive during the three additional months mentioned in the article already cited, claims which could not have been presented during the first thirty days, provided that in the judgment of the commissioners, or of the umpire, as the case may be, it is shown that a sufficient cause for not having made prompt presentation existed;

And thus the umpire decides this question which has arisen and been submitted for his determination.

ESTEVES CASE.

Spanish nationality of claimant may be shown by production of certificate from consulate of Spain showing that claimant is enrolled on register of Spanish citizens resident in Venezuela.

GUTIERREZ-OTERO, *Umpire:*

In the record of the claim which Miguel Esteves presents, claiming to be a Spanish subject, and demanding payment for various merchandise and animals which he asserts were taken by revolutionary and government forces during the civil war which terminated in the year 1900, a preliminary question, not decided by the commissioners, has arisen because the Commissioner of Venezuela is of opinion that said claim is not admissible, inasmuch as the claimant has not presented his certificate of naturalization, and it appears in the record that he is a native of Tetuan, a city of Morocco.

The Commissioner of Spain holds that, having a certificate of Spanish nationality, as appears by the certificate in evidence coming from the Spanish Legation, and in which it is stated that Esteves is enrolled upon the register of nationality of the vice-consulate in Villa de Cura, he is entitled to claim as a Spaniard. Because of a disagreement, the question has been submitted to the decision of the umpire.

It is not denied by the Commissioner of Venezuela that, although Esteves may be a native of Morocco, he could have acquired Spanish nationality, but he limits himself to claiming the necessity of the presentation of the document, which directly and originally evidenced this change of nationality, believing, no doubt, that by this means only it could be proved that said Esteves can rightly avail himself of the provisions of the protocol of April 2 of this year, signed at Washington by the representatives of Spain and Venezuela, relative to claims which *Spanish subjects* should make against this latter Republic.

In deciding if this necessity exists, the umpire has taken into account the following considerations:

It is a principle that it is the province of the internal legislation of States to declare or concede nationality to the individuals who form them, establishing the means by which it may be acquired, preserved or lost, and the manner that said States shall consider the character of their nationals as fixed.

The Spanish law, in article 26 of the civil code, provides that Spaniards who transfer their domiciles to foreign countries are under obligation to prove in every case that they have preserved their nationality, and so declare to the Spanish diplomatic or consular agent, who shall be obliged to enroll them, as well as their wives, if they be married, and their children, if they have any, in the *register of Spanish residents.*

The Spanish law, in articles 26 and 32 of the consular regulations, also provides that it is an attribute of Spanish consuls in foreign countries *to grant letters of residence or security to their nationals*, and it charges them with the duty of making a *register of the Spanish residents in the district.*

The enrollment in this list or register puts the party inscribed in it in possession of a letter which proves his nationality, and the letters with which Spanish residents in the Republic of Venezuela are provided, granted by the legation in the exercises of its powers as consulate-general which are united in it, or by their consulates and vice-

consulates in the exercise of the faculties which ordinarily belong to them, prove that the holder of one of these letters is a subject of Spain, to which the protocol of May 30, 1845, made by the above-named powers, refers.

Thus it is that the enrollment and the letter mentioned constitute proof of nationality, which can give way only to a more convincing proof to the contrary, which has not been attempted, nor made in the present case.

To these considerations strictly of a juridic nature to which said case belongs, others of admitted equity are joined which serve to support the idea of the sufficiency of this proof, since, on the one hand, certificates of enrollment have been considered sufficient by the decisions of this Mixed Commission to prove Spanish nationality, and, on the other hand, the umpire has diligently inquired concerning the manner in which such inscriptions are made in the register of the Spanish consular offices and has learned that they are not made unless the interested parties also produce proof of their character as subjects in the Kingdom of Spain. This last is in accord with the terms of the treaty of 1845,[a] already cited, in which it was provided as an indispensable requisite for the conservation of their nationality that Spaniards who at that time desired to reacquire it, as well as those who in the future might migrate to Venezuela, should have themselves inscribed in the consular register.

Finally, it must be considered:

First. That as a general rule and in the same manner as provided for Spanish consuls those of all nations are charged with the keeping of a register of their nationals.

Second. That even though it be true that the claimant, Miguel Esteves, stated in writing, which he executed before the judicial authority of Zamora, that he was a native of Tetuan, in the same document he began by stating that he was a Spanish subject and he continued to designate himself thus in all his proceedings without giving rise to any motive to suppose, all things being equitably considered, that the faith placed in his statement concerning his original origin by birth should contradict his statement relative to the nationality which he enjoys.

For these reasons the umpire decides that the claim of Miguel Esteves is to be admitted as one of a Spanish subject, and that the record should therefore be returned to the consideration of the commissioners, that they may consider it on the merits.

PADRÓN CASE.

It is an accepted principle of international law that States are not responsible to aliens resident in their territory for damages and injuries inflicted upon them by persons in revolt against the constituted authorities.[b]

This principle if invoked before a court of absolute equity becomes a technical objection which is expressly barred by the terms of the protocol.

The fact that this principle was expressly agreed to by both Venezuela and Spain for all future claims in a treaty of 1871 does not bind Spain and Venezuela so as to prevent them from entering into a new agreement waiving this stipulation.

---

[a] British and Foreign State Papers, Vol. 35, p. 301.

[b] See cases of Aroa Mines, p. 344; Kummerow, p. 526; Sambiaggio, p. 666; J. N. Henriquez, p. 896; Salas, p. 903.

In the absence of express stipulations in the protocol an arbitral court must decide according to the accepted principles of international law; but a tribunal called upon to decide on a basis of absolute equity renders judgment in accordance with the conscience of the arbitrators.

GUTIERREZ-OTERO, *Umpire:*

With respect to record No. 4, made up by the claim of the Spanish subject María García de Padrón, in whose favor payment of 1,300 bolivars is demanded, to indemnify her for the price of the rent of her house in Naiguatá occupied by the forces of the Government, and those of the revolution, from the month of September, 1899, to May, 1900; for the sum which she expended in repairing it on account of the damages which the occupants caused it; and the value of a shed destroyed by them, the commissioners because of difference of opinion have pronounced no judgment, and therefore the decision of the case has been left to the umpire.

The Venezuelan Commissioner has declared in his opinion relative thereto that he absolutely disallows the claim, and the Spanish Commissioner has stated that, in his opinion, the Government of Venezuela ought to be held responsible for the damages caused by the revolution and that the claimant has a right to the amount that she demands.

In the written memoranda[a] which the Commissioners have made to support their opinions, are explained the absolute opinion given by the Venezuelan Commissioner supporting the principle of irresponsibility of States for acts done by troops, or bands in rebellion against, or separated, in any way from, obedience to the constituted authorities; and on his part, the Spanish Commissioner holds that responsibility of States is not avoided by reason of internal or external changes, that it extends to injuries caused by political factions that strive to acquire power; and that if the Spanish subjects in Venezuela were not protected by indemnity for damages which the revolution has caused them, they would be in an oppressive position, and at the mercy of the misfortunes that it caused them, without resources on the one hand to prevent them, and on the other without a right to recover therefor.

This manner of arguing shows how the commissioners have forced the issue and drawn it into a state of absolute difference of opinion, indicated by the Venezelan Commissioner in contending that States are not responsible for damages which insurgents cause foreigners, and in deducing from this statement or general rule that the claim made in this particular case should be disallowed.

And the strictness of the principle which has been brought out in its application by the one invoking it, has been followed to such a point that he has not taken into account for the purpose of making a distinction the circumstance which the claimant alleges, and concerning which she produced proofs, that the damages were caused her not only by forces of the revolution, but also by those of the Government; and concerning this point, the Commissioner of Venezuela claims that the extreme vagueness of the expression *troops of the Government*, which is used, makes it impossible to determine if regular forces are meant whose acts could affect the responsibility of the nation.

Thus the decision asked of the umpire has been understood to be with respect to this particular case of which we are treating, whether

[a] Opinions of the commissioners not reported.

as a consequence of the application of the general principle which the Venezuelan Commissioner cites, who, in order to strengthen it and show that practically it has been accepted in the relations of his nation with Spain, refers to the convention of 1861,[a] made by both powers concerning some Spanish claims, and in which it was agreed that Spanish subjects injured by revolutions are obliged to prove the negligence of the constituted authorities in the adoption of the proper measures to protect their interests and persons, or to punish or reprimand those at fault; and that this provision, and the others that the convention contains, shall serve as invariable rules after it may be formally and explicitly ratified in the pending negotiations and those that may arise in the future.

The umpire will endeavor to render his judgment clearly and minutely, giving scrupulous attention to the important nature of said points, and the others he may have to touch on.

It is true that, with respect to international law, it is admitted that it embraces certain principles and rules, deduced more or less from its various aspects, but as Calvo remarks (preface to fifth edition, q. v):

> Il n'existe point de code universel applicable aux questions et aux conflits de toute nature qui surgissent entre les Etats. Cette absence de loi suprême, de règle commune, est la source de nombreuses hésitations parmi les publicistes, de contradictions infinies dans la jurisprudence et la pratique des peuples, de désaccords sans cesse renouvelés dans les relations internationales, qui, n'obéissant point à des principes nettement définis et invariables, s'inspirent quelquefois plutôt de l'arbitraire que de la justice, de la force que de l'action du droit.

The same author remarks how difficult, if not impossible, it is to give a complete definition of international law, among other reasons because its signification changes or is modified according to the advances of civilization, which is what has suggested to Wheaton the following very general formula:

> International law, as understood among civilized nations, may be defined as consisting of those rules of conduct, *which reason* deduces, as consonant to justice, from the nature of the society existing among independent nations; with such definitions and modifications as may be established by general consent. (Boyd's Wheaton, sec. 14, p. 22.)

It is unquestionable that this lack of a universal code common to all nations, and the necessity of deducing the principles and rules of international law from the various sources which constitute their origin, impress upon these principles and rules, as expounded and considered, be it by the states themselves in the relations of their governments; be it by local or international tribunals when they resolve questions of this sort; be it by the publicists in designating and explaining them, converting them into a doctrine; not the character of a written law, which no one has the power to give them, but necessarily the exclusive character of technical or scientific conclusions, rationally founded, capable of more or less contradiction, according to the force and clearness of their premises; more or less firm according as they are immediately or mediately deduced, and more or less general, more or less subject to modifications and exceptions, according to the subject-matter to which they refer.

This precise explanation having been made, it may be admitted as an established truth, that after a much debated discussion concerning

[a] British Foreign and State Papers, vol. 53, p. 1050.

the responsibility of states for damages which revolutionists cause to the persons and properties of foreigners residing in their territory, a negative solution has predominated and been accepted among the rules and principles, to which the umpire has heretofore alluded, that no right to demand indemnity for such damages exists; a principle, on the other hand, to which there have been pointed out various—we may say, numerous—exceptions which it is not necessary to state for the purposes of this decision.

Now, then, does this principle govern the case of María García de Padrón in such an absolute manner that it should be decided upon this point exclusively?

The protocol of April 2 of the current year, signed at Washington by the plenipotentiaries of Spain and Venezuela, and to which this Commission owes its origin, provides that *each claim* be examined and decided, and textually orders that—

> The Commissioners, or in case of their disagreement, the umpire, shall decide all claims *upon a basis of absolute equity* without regard to objections of a *technical nature* or the provisions of local legislation.

There have, therefore, been imposed on the said commissioners and on the umpire the three following rules of an imperative nature, and from which, in order not to place themselves in conflict with the instrument which gives them jurisdiction and confers on them their only powers, it is not permissible for them to depart:

First. Each claim must be specially and separately examined, without it being permissible to pronounce an abstract resolution conceived in general terms by which it might be supposed that, overlooking said consideration and decision of each case, different claims would simultaneously be decided. Therefore, in order to comply with the protocol, in each case the proper attention shall be paid to the general and special considerations which may be fitting and proper; and if it be necessary, the influence which is owed to the former shall be accorded them.

Second. In exercise of the right which nations naturally enjoy when they agree to create tribunals of arbitration, to establish the principles which must guide them in the decision of the disputed points which they submit to them, it has been made binding with respect to the members of this Commission *that they must found their decision upon a basis of absolute equity.*

Third. In order to dispel the least shadow of a doubt with respect to the scope of the preceding rule, and letting it be known that this Commission was created as a tribunal of equity only, it was provided, finally, that objections of a technical nature or provisions of local legislation should not govern or be taken into account as against the spirit and rule that their decisions should be reached in that sense.

The last of these rules would suffice to make it clear that the principle of the irresponsibility of states for damages which insurgents cause is incapable, unless we attribute to it an absolute force, to determine by itself the decision in the case of María García de Padrón.

This principle, like any other similar one, does not support any except a technical objection, and those of this nature are precluded by the protocol, in so far as they are opposed to the criterion of equity which must be the basis of their decisions.

Moreover, conceding to said principle any abstract force or merit desired, there is still room to inquire what the concrete force or merits

that it has are in a case which must be decided by this tribunal of absolute equity.

In tribunals of internal arbitration the principle of equity holds a most important place, and it is to be borne in mind and applied by all of them, whether rules for pronouncing their judgments have been conventionally fixed, since in the many difficulties which may arise they shall resort to the principles of law moderated by equity to decide them, or if no rules have been prescribed for them.

Because with the soundest reason they can appeal to equity when the *compromis* is mute, says Mérignhac, concerning the principles on which they should rely, or finally if absolute liberty has been allowed them, since, in that case, as the author cited repeats, no rule restrains them in principle and they are free to render judgment in accordance with their personal conscience. (Mérignhac, l'Arbitrage International, No. 305 et seq., p. 297.)

To the *provisions* which leave the arbitrator at entire liberty, as the same author continues further on, belong those which permit him "to decide according to justice and equity." This vague expression operates in effect so as to leave him at absolute liberty.

The creation of tribunals of equity in which the arbitrator decides according to his conscience has been frequently put into practice; and it has been considered so regular and convenient that the Institute of International Law included in it the rules of August, 1875, which it proposed and recommended for States when they sought to negotiate agreements for arbitration. Article 18 runs as follows:

Le tribunal arbitral juge selon les principes du droit international, à moins que le compromis ne lui impose des règles différentes ou ne remettre la décision à la libre appréciation des arbitres. (Revue de Droit International, 1875, p. 281.)

For this reason, referring to the varied nature of tribunals of international arbitration, M. Lafayette, cited by Calvo and Tchernoff, says:

Quand c'est d'après leur conscience, les sentiments d'équité ou les principes de droit naturel, que les arbitres doivent rendre leur sentence, ils constituent un *tribunal d'équité;* si, au contraire, c'est d'après les principes de droit formulés dans la convention ou d'après les principes déjà établis du droit international, l'on a un tribunal de justice. Les uns comme les autres forment de véritables corporations judiciaires et, en cette qualité, jouissent d'une entière indépendence vis-à-vis des parties dont ils tiennent leurs pouvoirs. (Cited by Calvo, Inter. Law, Vol. III, p. 464, Note I. Tchernoff, Protection des Nationaux, p. 378.)

And this character of tribunals of equity is especially adapted to mixed commissions, which are almost always constituted nowadays to decide cases of protection, since amongst other considerations proper for an intimate appreciation of justice, in which that character places them, is found the one that enables them to take into consideration those claims which the States refuse to recognize as not touching the principle nor the pecuniary debt, confusing the two things in the same opposition; an opposition which becomes so profound, as one of the authors just cited remarks:

que l'Etat y persiste même quand il se trouve en face d'un individu dont la situation mérite incontestablement une attention particulière. (Tchernoff, Protection des Nationaux, p. 382.)

Pursuing the logical order of ideas concerning the nature of mixed commissions the Institute of International Law agreed at its session of September, 1900, after having adopted a resolution concerning the

responsibility of States on account of damages caused to foreigners during an insurrection or civil war, to unite to it this recommendation:[a]

Recourse to international commissions of investigation and to international tribunals is in general recommended for all differences that may arise because of damages suffered by foreigners in the course of a revolt, an insurrection, or a civil war. (Annuaire de l'Institut de Droit International, Vol. XVIII, pp. 254, et seq.)[b]

In discussing this recommendation thus definitely drafted at the request of Mr. Lyon Caen, and as appears in the record of the 10th of September, attention was called to the fact that damages suffered by foreigners could be of two kinds, "those caused by the authorities and those caused by individuals." It was then further suggested that if the text did not comprise the second class it would be better to say "injuries caused *in the suppression* and not *during the course* of a revolt." The person who drew up the project and he who made the foregoing observation both expressly declared that the object was to exclude indemnities for damages caused by individuals; and after the declaration of the ideas of Mr. Descamps, asserting that while the institute was considering the proceeding and the conclusion it did not intend to exclude responsibility for damages which individuals might cause; and the explanations which the writer, Mr. Brusa, repeated, stating that by making no distinction the Commission had intended to include damages caused by individuals as well as the others, the proposal, such as it was and is drafted, was adopted and approved.

The institute relied evidently upon the principle that the tribunals to which they would be referred would be tribunals of equity.

In a case which occurred years ago, that is in 1892, and as to which the United States of Venezuela agreed with the United States of America to constitute a mixed commission of arbitration, to which they accorded the attributes of justice and equity, so that in accordance with these and the principles of international law it might decide the claim of the Venezuelan Steam Transportation Company; and Mr. Seijas, representative of the first of these powers, being aware of what the inclusion of equity among the considerations of the judgment signified, proposed, at the conference of July 1 of the year mentioned, that "the word 'equity' be stricken out, not only because of the conflict that existed between the doctrines of justice and equity, *but also to prevent the commissioners from believing themselves arbiters and not arbitrators in law, which is what Venezuela intended to name.*"

The American plenipotentiary did not consent to the change, and replied "that, in his opinion, the use of the word 'equity' would result more favorably than adversely to Venezuela, because it would *enable the commissioners* to better take into consideration all the circumstances of the case." Thus the protocol was drawn, and accepted as such, the concept of *equity* admitted as a rule to decide in a mixed commission, it permits it to do so without conforming to the law, which is what essentially characterizes arbiters.

And concerning this difference, between what the law does not exact and equity may nevertheless allow, there exists an example most important in its scope, which is the reparation by the State, because of the internal law, of damages caused by revolts or civil wars.

This example, which has been followed by several nations, emanates

[a] See p. 734 for fuller extract.
[b] For translation of all of these recommendations, see p. 733.

from France, where, in consequence of the revolution of 1848, the decree of December 24, 1851, was made, which in the pertinent portion reads as follows (Calvo 5th ed., Vol. III, p. 152, note):

> Considering that according to the terms of the law of the tenth of Vendemaire, year 4 (October 1, 1797), communities are responsible for wrongs committed by violence in insurrections, as also for the damages and actions to which they may give rise; * * *
>
> * * * Considering that even if the State *is not subject to any legal obligation*, it is in conformity to the rules of *equity* and of sound politics to repair unmerited misfortunes and obliterate, as far as may be possible, the sad recollections of our civil discords;
>
> It is decreed:
>
> ARTICLE I. That there be opened in the ministry of the interior a credit * * * to pay the indemnities for damages occasioned by the revolution.

In that case, as well as in the others of reparation after the war with Germany, the insurrection, and commune, said equitable reparations were affected without distinction as to damages inflicted by the authorities or the insurgents, and as well to nationals as to foreigners.

The foregoing is more than sufficient to show what are the points and attributes of international tribunals of equity, of which sort this Mixed Commission is, created by a protocol that does honor to the powers that signed it, in doing which they not only gave evidence of a lofty spirit, cutting off recourse from both to any principle or rule which smothers the inspirations of an upright and lofty conscience, but also of the most ardent desire that they show practically to foster the Institution of International Arbitration, conceding to it a broadness of scope that increases its efficacy and augments the number of cases intrusted to its cognizance and decision.

The umpire, therefore, believes it to be incontrovertible that classifying, as may be desired, the general principle of irresponsibility of States for damages which insurgents cause—that is to say, as a doctrine which gives rise to technical arguments, or as an inflexible rule of law—it can not govern in a positive way the case of María García de Padrón; and it being far from obligatory to decide it in accordance with the terms thereof, the positive duty of this Commission consists in deciding without taking into account a necessity which does not exist, resting upon a basis of absolute equity.

The preceding conclusion is in no way weakened by the circumstance that in the convention made in 1861[a] between Spain and Venezuela relative to Spanish claims, it was agreed that subjects of that nationality injured by revolutions were obliged to prove the negligence of the lawful authorities, and that this rule should be unalterable in the pending negotiations and those that might arise in the future, since if it be true that it was so agreed at that time it is also true that both powers retained the natural and absolute power to agree upon a different course whenever they might desire, and as they have in effect done by means of their above-cited protocol of the 2d of April of this year, which they negotiated for the settlement of the other claims which in their *entirety* must be decided *equitably*.

"The commissioners," says the protocol, "or, in case of their disagreement, the umpire, *shall decide all claims upon a basis of absolute equity*." Thus it is that the application of the rule of 1871 as a requisite in order that the claims, for the decision of which this Commission

[a] British and Foreign State Papers, vol. 53, p. 1050.

was established, might prevail and be decided favorably, is clearly incompatible with the principle of equity exclusively and imperatively set down for its judgments.

Having arrived at this point the occasion also appears to have arisen for the umpire, in accordance with the foregoing principles which he has established, to pronounce the decision which he believes equitable and fitting concerning the claim; but, as he understands that it was the intention of the commissioners to consider the case anew, if the umpire did not disallow it because of its revolutionary origin; and it is to be desired that in effect they may do so since they will once more evince their intelligence and impartiality, of which they have given so many proofs, the undersigned decides:

That this record return to the examination of the commissioners so that they may be pleased to decide the claim presented on behalf of María García de Padrón, considering that the principle of irresponsibility of States for damages which insurgents cause does not govern it, since it is not submitted for judgment on any other basis than that of absolute equity.

Lozano Case.

Under the terms of the protocol the Commission is bound to receive and consider all documents submitted by either government.[a]

Gutierrez-Otero, *Umpire:*

In the record of the claim made in the name of the Spanish subject, José Lozano, demanding the payment of 15,000 bolivars as indemnity for the damages which the revolutionary forces inflicted upon him in his mercantile establishment, situated in the city of Barquisimeto, on the 1st of October, 1899, there has arisen a preliminary question concerning the admissibility of the proof produced with the claim, since, while the Commissioner of Venezuela maintains that it is inadmissible because the evidence presented was given before the vice-consul of Spain, and because, therefore, the evidence given for him was of no value, the Spanish Commissioner is of the opinion that the declarations made before the consular agents of his nation ought to be admitted, since many times it is the only means of which Spanish subjects have been able to avail themselves to prove the facts upon which they base their claims. In an exposition of his belief said commissioner stated:

That the consuls of his country were authorized to receive the declarations of witnesses; that said faculty is in general inherent in all consuls, and that, at all events, it is to be borne in mind that this Mixed Commission is not a tribunal of justice, but that it ought to take into consideration all proofs that may be presented, giving to them the weight which they ought to have in accordance with equity, as prescribed in the protocol.

This point concerning the inadmissibility of the proof was submitted to the decision of the umpire, who, in rendering such opinion, believes that the express clause of said protocol, signed in Washington, April 2, of this year, by the representatives of Spain and Venezuela, are to be applied, in which, rules that must be observed are prescribed for this Commission, which can not assume powers which the protocol denies it, nor refrain from fulfilling the obligations which it imposes upon it.

---

[a] Pages 37, 600 and note, and 768.

The second article of the protocol cited, provides:

The Commissioners, or umpire, as the case may be, shall *investigate and decide* said claims upon such evidence or information only as shall be furnished by or on behalf of the respective governments. They shall be bound *to receive and consider all documents or written statements which may be presented by or on behalf of the respective governments in support of, or in answer to, any claim.*

And since the documents or statements, which tend to support the claim here considered, have been presented in writing and by the legation of Spain in the name of the Government, the Commission is bound to examine and consider them in order to take them into consideration in pronouncing the judgment which it may deem justified by the merits.

Nevertheless, the question of admissibility of the proof presented shall not prejudge its efficacy, which shall be appreciated by the commissioners or the umpire, as the case may be, as they may determine to proceed in accordance with absolute equity without regard to objections of a technical nature, or provisions of a local legislature, as prescribed as a binding rule.

Therefore the umpire decides that the proofs submitted with the claim made in the name of the Spanish subject, José Lozano, is admissible, and that the claim should be returned for the investigation of the commissioners, in order that they may decide it, examining and taking into consideration said proofs.

MENA CASE.

It is an accepted principle of international law that states are not responsible for damages and injuries caused by persons in revolt against the constituted authorities; but this principle under the terms of the protocol can not be invoked by Venezuela. [a]

GUTIERREZ-OTERO, *Umpire.*

In record No. 5, presented in the claim of the Spanish subject Domingo Gonzalez Mena, in favor of whom the payment is claimed of 34,744 bolivars as the value of 670 head of horses and mules situated upon the ranches belonging to him, the former having been destroyed by the belligerent forces in the war beginning in May, 1899, and the latter having been entirely lost during the same time, there arose a question concerning which the commissioners did not agree, and which, as a preliminary question, has been submitted to the umpire.

The Commissioner of Venezuela, referring to the circumstances, says that there is no exact statement concerning which force said troops belonged to, nor the name of the leader who commands them; and that there is question of the losses suffered because of war; he maintains that the State is only responsible for acts of its authorities, and also that strangers ought to suffer the consequences of wars which the country undergoes, and should not claim damages on this account, because they are produced by force majeure, which in no case can render said State responsible.

From this he deduces that Venezuela is not responsible for the damages which Gonzalez Mena says he suffered by reason of the war of 1899.

---

[a] See cases of Aroa mines, p. 344; Kummerow, p. 526; Sambiaggio, p. 666; J. N. Henriquez, p. 896; Salas, p. 903; Guastini, p. 730; Padrón, p. 921.

The Commissioner of Spain is of opinion that the interests of the claimant have not received the protection to which the treaties in force give them a right, and he maintains that said responsibility does exist.

The question set down in this way by the commissioners, it appears in the record that:

Not being in accord upon this point, its resolution shall pass to the decision of the umpire.

In reality the two following principles are invoked by one of the commissioners, in order that they may be applied and govern the case:

Primarily, the State is responsible only for the acts done by its agents, and not for damages which insurgents cause to foreigners, and therefore Gonzalez Mena has no right, from this point of view, to claim damages which the revolutionary forces may have caused him:

In general, the State is not responsible for damages caused as a consequence of war because damages of this sort are considered as caused by force majeure, which exempts it from liability.

Do these principles in fact govern the case of Gonzalez Mena in such an absolute way, that, by reason of both, it is not permissible to take into account any other consideration in order to decide it and make it necessary to reject it summarily?

With respect to the first of these two rules which have been cited, the umpire has, upon another occasion,[a] already decided that although after a long discussion the theory has undoubtedly prevailed concerning the irresponsibility of states for damages which insurgents cause to the persons or property of foreigners living in their territory, and such a principle is now considered as a rule properly called one of international law, it does not govern a tribunal of the nature of this Mixed Commission, which, according to the protocol that created it, should, on the contrary, necessarily base its judgments upon absolute equity and not take into consideration objections of a technical nature which may be raised before it.

This character of a tribunal of equity, which is considered sufficient for the submission to arbitration of cases of protection, has been recognized as giving absolute liberty for a decision which is not against good conscience inspired by a true estimation of absolute justice, and which permits, finally, taking into consideration of all the circumstances of the case, conceding equitably what is not a matter of obligation and can not be demanded, and, in a word, proceeding, as arbitrators proceed, that is, without regard to law.

The umpire has shown that the protocol of Washington, of April 2 of this year, by its own terms, and in accordance with the most reliable opinions which in this particular case can be produced, among them another protocol made in 1890 by the United States of Venezuela and the United States of America, places this Mixed Commission in that position.

Concerning the second principle—and even with more reason—substantially the same must be said, since if this doctrine to a certain degree did absolutely exist, that the acts of war do not give rise to the responsibility which obliges states to make arbitration, it would be modified by the theory that the distinction between these cases should

[a] Page 923.

be made as to those which, properly speaking, are defensible, and those which are not, therefore, of the nature of a fatal necessity.

Upon this point Fiore, cited by Tchernoff, says:

S'il est incontestable, dit un auteur, que la guerre a le caractère de nécessité fatale et de force majeure, tout ce qu'un gouvernement peut faire et entreprendre pour satisfaire aux justes exigences de la défense, en prévision d'une guerre, ou pendant la guerre n'a pas en lui-même le caractère de nécessité fatale. La guerre imminente ou déclarée peut, sans doute, nécessiter certains faits contre la propriété privée, et autoriser les détériorations de cette propriété dans l'intérêt public de la défense militaire: mais ce que l'autorité publique peut faire dans un but stratégique revêt toujours le caractère de l'entreprise légitime dans un intérêt public, et non toujours celui de nécessité fatale, caractère qui devrait être réservé uniquement aux faits accomplis durant l'action et rendus nécessaire pour résister à l'ennemi qui s'avance pour commencer la lutte. (Tchernoff, Protection des Nationaux Résident à l'Etranger, p. 309, citing Fiore, France Judiciaire, X. 1, p. 193.)

Tchernoff contends, that the council of state in France established the distinction with respect to the demolition of real estate in the zone of the defense of Paris from between those which constituted a measure of this nature until the disaster of Sedan, and those after this event considering the latter as an act of war, which did not give, as the first did, a right to indemnity.

That the French court of cassation has decided that the damages caused to private property by the works completed, even in case of necessity for the defense of a stronghold in a state of war, give a right to indemnity in all cases where they do not constitute a case of force majeure;

And finally that an author, cited in La France Judiciaire, expresses himself as follows:

Si, au lieu de s'en tenir à la forme, on va au fond des choses, qu'il s'agisse des dommages résultant de travaux de défense antérieurs à l'action, ou des dommages résultant d'opérations militaires d'attaque ou de défense durant l'action, il y a toujours, dans un cas comme dans l'autre, des citoyens qui souffrent un dommage dans l'intérêt collectif de la patrie.

Dès lors, la collectivité des citoyens, ou le gouvernement qui la représente, doit indemniser intégralement les particuliers des pertes qu'ils ont subies dans l'intérêt commun, soit avant, soit après l'action. Du reste, le système contraire est tellement injuste, que ses partisans n'osent pas le pousser jusqu'à ses dernières conséquences logiques, mais le mitigent en disant que l'équité doit conseiller à l'Etat, même lorsqu'il s'agit des dommages causés durant l'action, à faire la charité aux victimes de la défense nationale. (Tchernoff, Protection des Nationaux Résidant à l'Etranger, pp. 311, 312; citing a note of the translator of La France Judiciaire, X, 1, p. 192.)

Thus it is that although without taking into consideration that the case of Gonzalez Mena is submitted to a mixed commission, which is obliged to decide according to equity, the question of indemnity for acts of war appears, moreover, to be a question recommended in general for its decision to the same criterion of equity, but these considerations which fix the necessity of deciding this claim upon its merits in no way prejudges the facts nor entail an opinion concerning the nature of those facts which have been the subject of the proof produced.

It is for this reason that the umpire in declaring that the rules invoked in an absolute sense with respect to damages caused by the revolution or by acts of war do not govern the case proposed, necessitating its disallowance decides expressly and exclusively:

That this record is to be returned to the commissioners in order that they may decide the claim presented on behalf of the Spanish subject Gonzalez Mena, bearing in mind that it is not subjected in this respect to any other criterion than that of absolute equity.

FRANQUI CASE.

In the absence of an express provision to the contrary, the Commission has the right to adopt whatever means it determines upon to obtain evidence.

A witness can not discredit by subsequent retraction statements made by him as a governmental authority, especially where his statements have been corroborated at the time they were first made.

GUTIERREZ-OTERO, *Umpire:*

In record No. 70 relative to the claim made on behalf of the Spanish subject Alonzo Franqui a difference of opinion has arisen, and it is submitted to the umpire for his decision because upon the Venezuelan Commissioner's demand that Gen. Maurice Aguilar, whose testimony has been presented in support of said claim, should be heard by the whole Commission, the Spanish Commissioner was of opinion that the protocol, in its second article, expressly limits the persons whom said Commission ought to hear, and therefore the declaration of Gen. Maurice Aguilar is not to be admitted; and the undersigned takes into consideration and decides this point in the following manner:

First. That the protocol, signed in Washington on April 2 of this year by the representatives of Spain and Venezuela for the establishment of this Mixed Commission, does not limit the means of proof which may be made use of before it, and only demands in the first part of the second article that the proof shall be rendered by the respective Government or in their name; and in the second part of the same article that the Commission shall receive and consider all documents or written statements which may be presented by the Governments in support of or in answer to any claim.

Second. That in the absence of an express prohibition concerning the admissibility of determining means of proof, it is the unanimous conviction of the most conspicuous writers upon international law, which Mérignhac expresses in these terms:

* * * Alors le tribunal arbitral demeurera libre d'employer, pour s'éclairer, tous les genres de preuves qu'il croira nécessaires; et il ne sera lié, à cette égard, par aucune des restrictions qu'on rencontre dans les lois positives, spécialement quant à l'administration de la preuve testimoniale. (Mérignhac, Traité de l'Arbitrage International, No. 272, p. 269.)

The Institute of International Law, in article 15 of the Rules for Arbitration between Nations, proposes substantially the same thing. [a]

Third. That although supposing that the text of the protocol of Washington was doubtful, and demanded to be interpreted for want of clearness, the interpretation ought to be made in a broad sense because the general principles of legislation and jurisprudence provide a broad scope in this matter of proof; and because it is clearly a general rule that the oppressive [in the protocol] ought to be restricted and what allows freedom of action extended in interpreting it; and finally because this broadness of interpretation should be more binding when there is question, as with this Commission, exclusively of a tribunal of equity.

Fourth. That the duty imposed by said protocol in the second part of Article II to hear oral or written arguments which the agent of each nation may make concerning each claim does not mean more than that they shall not be prevented from being heard, and the acknowledgment that it is incumbent upon the agents to argue for

[a] Revue de Droit International, 1875, vol. 7, p. 280. (See p. 927.)

their respective Governments; but by no means does it include, according to the concept of the umpire, the other prohibition to receive specific proofs, and much less to hear those who naturally are to take part in them.

Fifth. That considering the broadness of the powers of the Commission and its character as a tribunal of absolute equity, there is no reason for not considering included in them the right to accede to the request of one of the arbitrators, who spontaneously for his own information and that of his colleagues believes it opportune and proper that there be heard by all, and examined if it please them, a person who in his public, civil, and military character has already given testimony in the matter under consideration; and this proposition, which is not ex parte, since it is not the request of any agent in the name of his Government and merits attention because of the impartiality of its origin and the benefit of its purpose, is to be counted in order to be accepted, with the reasons heretofore set forth, and perhaps even with other superior ones.

Therefore the umpire decides:

That Gen. Maurice Aguilar is to be heard by this Commission in accordance with the request of the Commissioner of Venezuela for the purposes which have already been expressed.

After this opinion was delivered, General Aguilar was called as a witness before the Commission, and testified that in the official letter given by him to the claimant, setting forth the latter's loss, he had overestimated the value of the property.

The Commissioners for Spain and Venezuela, being then unable to agree as to the decision of the case, it was passed to the umpire for his judgment, and after reciting in detail the facts and evidence of the case, he decided in the following manner with respect to the weight of the oral testimony of General Aguilar:

The umpire considers:

* * * * * * *

Fourth. That with respect to the valuation of 250,000 bolivars, the umpire is of opinion that it ought to be accepted, because if it is true that General Aguilar in fact has retracted his statement concerning it, and testified before this Commission as to his want of knowledge, and the extraordinary inaccuracy with which said valuation was conducted, he can not succeed in discrediting with his later statement, given now, the official act of that time, when exercising the duties of public authority, namely, as civil and military superior of that locality, he estimated the loss caused during a battle in which he took part as one of the officers engaged.

His statement of that time is corroborated by the testimony of the bookkeeper, who testified relative to the character of the losses suffered; and by the declaration of Franqui, who, although the person injured, and the interested party, enjoyed the reputation of unblemished integrity according to the declaration of witnesses, who affirm that the conditions of the houses of said Franqui could have suffered damages to the amount indicated, and in general by the nature of the event capable, no doubt, of producing the loss of whatever was situated in the place where such a dreadful disaster occurred; besides, it is to be remembered that, not only before this Commission, General Aguilar expressly said that before answering he had at various times thought what he was asked; but six months after having given his answer in writing and made the valuation aforesaid, he corroborated them judicially under oath, stating that their contents were true. He has also testified before this Commission that the reputation for honesty and integrity of Franqui was unassailable and generally known. Thus it is that a latent sense of justice indicates that the first testimony of General Aguilar is entirely credible.

After making various deductions on other grounds, the umpire awards the sum of 191,000 bolivars.

CORCUERA CASE.

Where the Government of Venezuela has admitted and agreed to pay a debt due a Spanish subject for services, such debt becomes a portion of the national debt of Venezuela, and the obligation will not be extinguished by a clause of a treaty between Spain and Venezuela of a later date canceling all pending Spanish claims.

GUTIERREZ-OTERO, *Umpire:*

In record No. 120, which contains the claim of the Spanish subject Gen. Leonardo Corcuera, in favor of whom the payment of 2,201.96 bolivars is demanded, in accordance with an order recognizing and ordering him paid this debt by the minister of war, issued on February 18, 1898, a disagreement between the commissioners has arisen, and the case has been referred to the decision of the umpire.

The claimant presents the order referred to, and, moreover, a confidential note of the minister of foreign relations dated May 24, 1898, in which it is announced to the Spanish minister that the President of the Republic, lamenting that immediate payment of the order can not be made, has decided to do it in monthly installments of 500 bolivars, which would begin to be paid in the following June. Payment, however, has not been made in any way, and for that reason Corcuera has made a claim before this Commission.

The Commissioner of Venezuela is of opinion that the claim can not be admitted, and that no jurisdiction over it can be taken, because the claim is prior in date to February 25, 1898, when, in accordance with the convention of June 21 following, all Spanish claims then pending were canceled.

The Spanish Commissioner holds that Corcuera has a right to enforce his credit.

The umpire considers:

1. That with respect to the existence and legitimacy of the amount of the debt there is no doubt, because the claimant possesses an official document of the minister of war which acknowledges and orders this debt of the Government of Venezuela to be paid, the origin of which, moreover, is explained in detail, which shows that it arose because of military service furnished, which Corcuera performed by order of the minister of that department.

2. That this recognition and order were of February 18, 1898, and consequently constituted the debt from then on as a portion of the public debt of Venezuela and an asset which had become the property of Corcuera; it is not comprised among the credits canceled according to agreement of June 21 of the same year, because said credits were only the pending claimants, which were ordered to be paid by a stipulated sum. This debt being of such a nature, it was by no means included among pending reclamations.

3. That this correct understanding of the agreement of June 21, 1898, is set forth in the text thereof, because it appears therein that for the renunciation on the part of Spain to the recovery and payment of another credit existing and recognized, as was that of the installments of the Spanish debt which were not recovered during eleven months, running from May, 1892, to April, 1893, an express stipulation was made, and the cancellation of the other pending reclamations until February 25 was not sufficient to include it.

With respect to the debt due Corcuera, no renunciation existed, as it was indispensable in order that it should be excluded from his property.

4. Besides, on May 18 it was already known that pending claims would be canceled, because it was thus agreed in the convention of December 20, 1897, and it was also announced in the judgment of February 25 following, rendered by the commissioners charged with the settlement of said claims, both of which documents served as premises for the agreement of June 21, which did no more than refer to such acts; and, notwithstanding this undeniable knowledge of the facts, on said 18th day of May the Government agreed, and so communicated to the Spanish legation, that it would pay the debt of Corcuera by monthly installments of 500 bolivars.

Because of all the foregoing, and the umpire also making it known that, although the claimant rendered military service to Venezuela, he did so with the permission of his Government, and therefore preserved his nationality, decides that the claim of the Spanish subject Leonardo Corcuera falls within the jurisdiction of this Commission and must be allowed for the sum of 2,201.96 bolivars, and that, therefore, the Government of the United States of Venezuela should pay a like sum to His Majesty the King of Spain for the services of this subject.

SANCHEZ CASE.

Where the evidence produced in support of a claim is too vague to enable the Commission to determine the amount of the claim, said claim will be dismissed.[a]

GUTIERREZ-OTERO, *Umpire:*

In record No. 74, which comprises the claim of the Spanish subject J. Manuel León Sanchez, in favor of whom an indemnity of 50,000 bolivars is demanded for material damages which he says were caused by preventing him from continuing a periodical publication, legitimately established, a disagreement has arisen between the commissioners, and the case has been submitted to the umpire for his decision.

The claimant says:

That his said periodical leaflet which was called *Movimiento Marítimo y Comercial y Noticias Universales* was established by permission of the government of the Federal District granted on the 18th of December, 1902, and produced for him a profit from the start so encouraging that he was able thereby to satisfy all his obligations and outlays of expense, and to realize a monthly return of from 1,700 to 1,800 bolivars.

That upon the 15th of February following there was verbally announced to him by agents of the police an order, first from the prefectura and afterwards from the government of the district itself, that this publication should be suspended.

That in vain he sought, by all the means in his power, for the revocation of the order; that he did not procure the aid of the lawyers who might defend his rights before the tribunals and help him in a claim for damages which he might wish to bring.

That in view of these circumstances, and suffering the inevitable execution of an order which was not based upon a true cause of complaint, which had been made without right, which was not even

---

[a] See also De Zeo case, p. 693.

couched in legal form, he found himself obliged to realize upon all his business in Venezuela by an inopportune sale of his printing establishment, and to emigrate to another country to seek support for his family.

To the foregoing statement of facts, and to support it, León Sanchez annexed the original permission to publish his leaflet; a letter from the manager of the French cable, which certified that he had never altered any translation or notice which were received by said manager; copies of various private publications, which were made for the purpose of procuring the withdrawal of the order of suspension; copies of various periodicals in which the notice of this order was published, and the cause attributed for it, which was the inaccuracy of said translation; two letters of persons who assert that León Sanchez was the manager of two newspapers; that later he was the owner of the *Movimiento Marítimo;* that this was suspended in the manner stated; that Sanchez endeavored to procure the revocation, devoting himself to the steps before mentioned; that he did not seek redress before the tribunals, because everybody considered it useless; and that there were printed and distributed from 300 to 350 copies of each one of the editions of the *Movimiento Marítimo y Comercial y Noticias Universales.*

Such are the complaints and proofs exactly and minutely set forth.

The Venezuelan Commissioner is of the opinion that León Sanchez has no right to demand any indemnity for the suspension to which there is reference, and he cites in support of his opinion the decree issued on May 10, 1902, by which the President of the Republic suspended, among other guarantees or constitutional rights, that of free expression of thought by word of mouth or by means of the press.

The Spanish Commissioner maintained that where there is question of an enterprise legally established with previous permission of the Government of Venezuela the latter is responsible for the damages caused claimant.

The umpire does not take up this question of responsibility, because, in the supposition that it might be determined abstractly or in principle against Venezuela, it would not be possible to fix these terms concretely in order to make it effective, because the claimant has not proved even one of the facts necessary to estimate and determine any indemnity.

In order that this want of evidence might clearly appear, the undersigned made the detailed enumeration of the proofs presented, which do not relate to the value of the publication, nor to the expenses incurred, nor the income, nor even to the profits and possibilities of its being maintained, nor upon the necessity which the facts imposed on León Sanchez of selling his printing establishment and absenting himself from the Republic, nor upon the value of this establishment, nor upon the price for which it was necessary to sell it, nor, in a word, upon anything that might justify the amount of property lost or injured.

Such an extreme in this respect was reached that not even when the private testimony of two persons was asked upon the fact of there having been published and distributed from 300 to 350 copies of each one of the editions of *Movimiento Marítimo* was there any proof as to how many of these editions there were, if they ceased to be published any day, and what expenses and profits they produced, nor whether these later circumstances refer to each edition, each day, or each month of the two months which the publication approximately lasted. In no case, therefore, could the umpire enter into an equita-

ble appreciation of the facts which are not alleged and proven, nor much less invent them, in the want of all proofs produced by the interested party.

These reasons suffice to render it unnecessary to examine and resolve other questions, and make it necessary to decide, as the umpire does decide:

That there is no reason for granting (because of the reasons alleged in this record) any indemnity in favor of the Spanish subject, J. Manuel León Sanchez.

BETANCOURT CASE.

In the absence of an express mention of a liquidated and acknowledged debt due from the Government of Venezuela to a Spanish subject in a stipulation of a treaty cancelling all pending Spanish claims, such obligation will not be released.[a]

For the proper interpretation of a treaty all the circumstances antecedent to its execution may be examined by the Commission.

GUTIERREZ-OTERO, *Umpire:*

In record No. 71, which comprises the claim of the Spanish subject Federico Betancourt, in favor of whom the payment of 43,300 bolivars is demanded on account of the formation and management of an expedition of immigrants from the Canary Islands to the port of La Guaira in the year 1892, and the damages and injuries which he alleges to have suffered because of the failure of prompt payment, the commissioners have not agreed, and the case has been submitted to the decision of the umpire.

The claimant shows:

That in February, 1892, he brought into Venezuela, through the port of La Guaira, an immigration from the Canary Islands comprised of 389 persons, whom he brought over in the Spanish bark *La Fama*, in accordance with a contract which he had entered into with the government of the Republic, and that although the immigrants were carefully chosen and the inspection of them which the officers officially named for this purpose made of them resulted satisfactorily, not only at the point of sailing, but also at the place of arrival—that is to say, in the Canary Islands and in La Guaira—nevertheless, he estimated that the debt which was acknowledged for the passage should be fixed at the sum aforesaid, and not at the larger sum which the law of the subject matter fixed and that he believed that he had merited, in all justice, on account of the proper fulfillment which he made of the contract entered into by him.

He further shows that, notwithstanding the time elapsed since the debt was liquidated and fixed and the necessary steps which he has taken administratively in order that he might be paid it, it still remains unsettled, and thereby he has been caused grave injuries, on account of which he demands to be indemnified, besides having the principal debt paid him.

To determine these damages he enters into an explanation of various operations which he could have undertaken with the value of the debt, if he had received it, and states that he is willing to consider it entirely satisfied with the result of any one of them.

To prove his debt he put in evidence various documents, and among them a certified copy which, by order of the minister of fomento, on

---

[a] See Corcuera case, p. 936.

the 16th of January of this year, was issued to him, and also of another certification given on September 24, 1892, by the director of statistics and immigration, certifying that in the archives of the office there existed a record, properly substantiated, in which it appears that Betancourt brought the immigration aforesaid, composed of 389 persons, as appears in the list sent to the minister by the subordinate commission of immigration of La Guaira, in accordance with the law in the premises, and therefore the Government owed said Mr. Betancourt the sum of 43,320 bolivars according to the accounting which his commission found in said record.

In order to show what is the interest which is customarily collected here in negotiations of loans, he presents two letters from the banks of Venezuela and Caracas, in which their representatives state that it is 12 per cent per annum.

When the claim was presented to the commissioners, the Venezuelan Commissioner considered that it ought to be disallowed because the diplomatic convention of June 21, 1898, made by the ministers of foreign relations and public credit of Venezuela and the ministers plenipotentiaries of Spain and this Republic canceled it, and consequently it was excluded from the examination of this Commission in accordance with Article I of the protocol of Washington.

The Spanish Commissioner was of opinion that the claimant ought to be allowed the sum which he demanded, because there was question of a contract which he entered into with the Government of Venezuela, the fulfillment of which he had been attempting, and to obtain in an administrative way without being able to accomplish its fulfillment, and that the claim of Betancourt did not form a part of those which were readjusted by said convention.

The umpire considers:

That Article I of the protocol signed at Washington on April 2 of this year places under the jurisdiction and decision of this Commission all claims of Spanish subjects which have not been settled by diplomatic agreement or by arbitration between the two Governments of Spain and Venezuela, and the first thing to be done, therefore, is to investigate with respect to the claim of Betancourt if it was included in the agreement of 1898 and was canceled thereby, as the learned Commissioner of Spain and Venezuela has contended.

That said convention of 1898 acknowledged as a precedent another convention of December, 1897, concluded at a conference, which at that date the minister of hacienda of Venezuela and the plenipotentiary of Spain had, and in the text of which it was expressed that said conference treated all claims still pending made by various Spanish subjects for injuries suffered during the war of 1892, and for other reasons; and that one person was named by the minister of hacienda and another by the legation of Spain, who examined all claims and determined the total sum which the Government of the Republic should pay therefor. They decided thereafter the terms of the payment and it was agreed providing:

That as soon as the bonds of the diplomatic debt which should be issued for the sum which might be determined should have been delivered, the legation of Spain would renounce with full authorization of its Government all other claims of Spaniards against Venezuela up to date, and also any claim that might arise from the suspension of the monthly payments during the duration of the past war.

That in the record of the conference held on June 21, 1898, which resulted in the convention of that date, successively approved by all the executive and legislative powers of Venezuela, it appears:

That an exact transcription was made of the other protocol of 1897, relative to the adjustment of claims pending by Spanish subjects by reason of the war suffered in 1892, and for other reasons, and attention being called that in said protocol it was agreed that the legation of Spain should renounce every other claim of Spanish subjects up to that date; and also every other claim that might have originated on account of the failure of payment of the eleven monthly installments during the duration of last June, 1892;

Wherefore the minister of Spain declared that at no time could there be demanded from the Government of the Republic the payment of said eleven monthly installments.

It likewise provided that the persons named to adjust all the claims and fix the amount that on account of them should be paid, accomplished their mission, and determined the sum which ought to be delivered to the Government of Venezuela for the different cancellation of all pending claims.

Finally the terms of the convention of that date, June 21, 1898, were definitely fixed, the first part of which reads as follows:

All claims of Spanish subjects up to the date of this judgment, or say February 25, 1898, shall be canceled.

That having considered the inducements which the convention of 1898 had and the definite text which has just been cited, it appears with entire clearness to the judgment of the umpire:

First. That all the claims which were canceled, were all those pending which were intrusted to the determination of the commissioners named for that purpose, and for the payment of which a specified sum was designated;

Second. That in no sense was there made or acceded to any claim which would likewise cancel debts which at that time were liquidated and acknowledged by the Government of Venezuela in favor of Spanish subjects, and which formed, therefore, a part of the public debt.

This proper understanding of the convention is corroborated by these very terms, since it being desired that there should be included also the cancellation or renunciation of another debt already liquidated and acknowledged, as was that of the eleven monthly installments, due on account of the Spanish debt, which were not paid from May, 1892, until April, 1893; with respect to this, particular and express stipulation was made, and it was not considered as included in the cancellation of the pending debts, which were the object of the transaction and the agreement to pay intrusted to the commissioners who were named for these purposes.

In a separate clause the following was agreed in said convention of 1898:

The legation of Spain declares that at no time may it demand from the Government of the Republic of Venezuela the payment of eleven monthly installments that were owed in 1892–93.

That was the only renunciation contained in the convention, and there were no other debts then existing for the determination and acknowledgment of which the Government of Venezuela might have made, and which also, therefore, belonged to the patrimony and property of the creditors.

That the debt of Frederico Betancourt belongs to those of this sort, supposing that an entirely trustworthy certification, because it proceeds from the ministry which has in custody the antecedents of this negotiation, proves the true amount and acknowledgment thereof before the convention of 1898 was made; consequently it was not included in the pending claims which at that time were adjusted and canceled in said year, nor was it the subject of any negotiation which might abstract it from his property.

That from the foregoing it is deduced upon the most secure basis that said credit, now that there is an attempt to collect it because it has not been satisfied, is not in any way excluded from the jurisdiction of this Mixed Commission, and that besides, in accordance with every sentiment of justice it must be declared that it ought to be paid, even if to this end it was necessary to apply equity as far as possible.

That upon this point it must be taken into consideration that although a long time has expired since the liquidation ought to have been made, since even in September of 1892 the debt was ascertained and acknowledged, and that without it the claimant must have experienced damages on account of the refusal to pay, they can not be repaired in any of the ways which he indicates and with respect to which he renders no proof.

Nor at the rate of 12 per cent per annum upon the capital, because, even supposing that he might have maintained a suit to ascertain these damages at this rate of interest, he would not have accomplished his intention.

Equity does no more than allow him for this capital a total and complete indemnity which is almost equivalent to 5 per cent per annum as long as it has been unsatisfied, and that the umpire should fix the sum of 14,295 bolivars and 70 centimos as corresponding exclusively to a period of eleven years exactly.

For the foregoing reasons the umpire decides that the claim of the Spanish subject Frederico Betancourt must be allowed for the total sum of 57,615.60 bolivars; and that, therefore, a like sum must be paid by the Government of the United States of Venezuela to His Majesty the King of Spain destined to satisfy said claim.

SUMMARY OF CLAIMS.

No.	Name of claimant.	Amount claimed.	Amount disallowed.	Amount allowed.	Remarks.
		Bolivars.	*Bolivars.*	*Bolivars.*	
1	Francisco Aleman Marrero	120.00	.....	120.00	
2	Abraham S. Cohen	16,000.00	5,334.00	10,666.00	Award by umpire.
3	Miguel Esteves	3,717.20	1,217.20	2,500.00	
4	María García de Padrón	1,580.00	212.00	1,368.00	Do.
5	Domingo González Mena	34,744.00	12,411.00	22,333.00	Do.
6	José Lozano	15,000.00	5,000.00	10,000.00	Do.
7	Silvestre Mendóza García	5,255.00	.....	5,255.00	
8	Antonio Padrón Rodríguez	9,936.00	720.00	9,216.00	
9	Bernardino M. Ruiz	99,608.00	21,572.00	78,036.00	Do.
10	Juan Vega	10,400.00	.....	10,400.00	
11	Víctor Hernández Sedré	8,000.00	4,800.00	3,200.00	
12	María Domínguez Acuña	1,760.00	853.00	907.00	Do.
13	Francisco González Jordan	3,200.00	2,600.00	600.00	
14	Francisco Vegas Hernandez	5,320.00	820.00	4,500.00	
15	Juan Florentino González	400.00	100.00	300.00	
16	Benarroche Hermanos	1,018.00	138.00	880.00	
17	Amaro Bravo	1,250.00	250.00	1,000.00	
18	José Gorrín	180,680.00	3,460.00	177,220.00	Do.
19	José A. Fernández	1,680.00	430.00	1,250.00	
20	Gerónimo Caba	20,000.00	15,000.00	5,000.00	
21	Gerónimo Cerisola	36,000.00	20,040.00	15,960.00	Do.
22	Francisco Avellan y Ca	20,800.00	6,933.00	13,867.00	Do.
23	Juan M. Jiménez	4,000.00	1,667.00	2,333.00	Do.

Summary of claims—Continued.

No.	Name of claimant.	Amount claimed.	Amount disallowed.	Amount allowed.	Remarks.
		Bolivars.	*Bolivars.*	*Bolivars.*	
24	Carlos Negrin	4,000.00	.....	4,000.00	
25	Pilo Hermanos	425.28	.....	425.28	
26	Celedonio Perez Felipe	14,677.00	5,177.00	9,500.00	
27	Antonio Peréz y Troya	520.00	170.00	350.00	
28	Rafael Valido	20,000.00	6,666.00	13,334.00	Award of umpire.
29	Francisco Abellan	14,000.00	11,667.00	2,333.00	
30	José Antonio Almenar Garcia	4,142.50	3,142.50	1,000.00	
31	Abraham Benchimol	36,000.00	13,333.00	22,667.00	Do.
32	Antonio Borges Toledo	560.00	280.00	280.00	
33	.....do	41,328.00	4,728.00	36,600.00	Do.
34	Antonio Carmenati Ravelo	600.00	.....	600.00	
35	Ramón Chico y Torres	624.00	524.00	100.00	
36	Domingo León Ramos y Cabrera	4,076.00	800.00	3,276.00	
37	Juan Martinez	280.00	.....	280.00	
38	Donato Orta Martinez	1,400.00	.....	1,400.00	
39	Lucas Perez y Perez	1,055.00	255.00	800.00	
40	Antonio Perez Ruiz	400.00	50.00	350.00	
41	Florencio Ramos y Diaz	6,992.00	1,992.00	5,000.00	
42	José Recio	3,200.00	700.00	2,500.00	
43	Isidoro Castro Fariña	600.00	.....	600.00	
44	José Hernández	1,120.00	.....	1,120.00	
45	Benito Morales y García	11,500.00	3,500.00	8,000.00	
46	Miguel Ramallo Javier	1,000.00	333.00	667.00	Do.
47	Venancia Tavio de la Rosa	1,016.00	196.00	820.00	
48	Miguel Ramallo Javier	1,576.00	926.00	650.00	
49	Domingo Bello	8,000.00	3,000.00	5,000.00	
50	Antonio Alvarez Abad	1,736.00	336.00	1,400.00	
51	Antonio Hernández	16,080.00	.....	.....	
52	Jacinto González y Perdomo	1,536.00	636.00	900.00	
53	Luis María Cabrera Rodriguez	4,991.48	1,991.48	3,000.00	
54	Juan Fariña Rodriguez	15,620.00	6,620.00	9,000.00	
55	Pedro y Cipriano Morales	56,000.00	31,000.00	25,000.00	Do.
56	Isidoro Rojas	32,000.00	22,000.00	10,000.00	
57	Domingo León Ramos	6,032.00	2,782.00	3,250.00	
58	Venancio R. Arango	4,400.00	.....	4,400.00	
59	Bernardino M. Ruiz	77,840.00	36,262.00	41,578.00	Do.
60	Eusebio S. Hernández	32,072.00	20,800.00	11,272.00	Do.
61	Rafael Daiz García	12,800.00	6,940.00	5,860.00	Do.
62	Palan y Ca	16,480.00	7,480.00	9,000.00	Do.
63	José Gorrin	336,957.00	145,623.00	191,334.00	Do.
64	J. Manuel León Sánchez	50,000.00	.....	.....	
65	Benito Lamberti	2,880.00	1,580.00	1,300.00	
66	José Benito Rios y Donato	1,480.00	880.00	600.00	
67	Agustin Rodriguez Martin	283,104.72	167,851.72	115,253.00	
68	José A. Faria y A. Santana	800.00	.....	800.00	
69	Antonio González y González	3,288.00	1,100.00	2,188.00	Do.
70	Alonso Franqui	434,000.00	243,000.00	191,000.00	Do.
71	Federico Betancourt	150,690.44	93,074.84	57,615.60	Do.
72	José Crespo Santiamo	11,254.20	3,254.20	8,000.00	
73	Francisco Rodriguez Castro	1,200.00	200.00	1,000.00	
74	Calletano Alvarez Lubardo	2,800.00	1,050.00	1,750.00	
75	Domingo Pérez Santana	480.00	.....	480.00	
76	J. Alonso Dias	300.00	.....	300.00	
77	Telésforo Gómez	400.00	.....	400.00	
78	Felipe González	160.00	.....	160.00	
79	José González Acevedo	640.00	240.00	400.00	
80	José Hernández Mesa	400.00	.....	400.00	
81	Cristobal Jiménez Gabriel	384.00	84.00	300.00	
82	Gabriel Martinez León	200.00	.....	200.00	
83	Facundo Riera Cabrera	400.00	.....	400.00	
84	Juan Bautista Rodriguez D	240.00	140.00	100.00	
85	Francisco Rodriguez Carballo	1,500.00	900.00	600.00	
86	Juan Rolo Adan	500.00	.....	500.00	
87	.....	.....	.....	.....	
88	Diego Benitez Acosta	880.00	380.00	500.00	
89	Patricio Febles y Gonz	554.00	54.00	500.00	
90	María Lugo de González	900.00	300.00	600.00	
91	Francisco Luis Dias	800.00	300.00	500.00	Do.
92	Antonio Martinez Pacheco	1,701.00	567.00	1,134.00	Do.
93	Gumercindo Pacheco y Padrón	1,200.00	600.00	600.00	
94	Benolol y Garzon	32,863.20	9,000.20	23,863.00	Do.
95	Sebastian Padron	1,600.00	600.00	1,000.00	
96	Angel Ma Perez	1,200.00	700.00	500.00	
97	Fortunato Guanon	46,686.48	31,295.48	15,391.00	Do.
98	Juan Arocha Morera	360.00	.....	360.00	
99	Teresa González de Morejon	7,680.00	4,680.00	3,000.00	Do.
100	Francisco Vegas Hernández	320.00	.....	320.00	
101	Victoriano Fernández Moro	14,165.00	9,659.00	4,506.00	Do.
102	Manuel Hernández	6,000.00	2,074.00	3,926.00	Do.
103	Cristobal Jiménez Gabriel	300.00	.....	300.00	
104	Pedro García González	360.00	.....	360.00	
105	Esteban Caceres Méndez	480.00	.....	480.00	
106	Fortunato Guanon	4,757.00	.....	4,757.00	

Summary of claims—Continued.

No.	Name of claimant.	Amount claimed	Amount disallowed.	Amount allowed.	Remarks.
		Bolivars.	*Bolivars.*	*Bolivars.*	
107	Manuel Vilariño	481.00	48.00	433.00	
108	José Lebrón Morales	4,000.00	500.00	3,500.00	
109	Abraham I. Benchimol	48,400.00	32,400.00	16,000.00	Award by umpire.
110	Francisco González I.	32,662.70			
111	Antonio González Rodríguez	22,360.00	18,360.00	4,000.00	Do.
112	Juan Pestano y García	1,200.00	400.00	800.00	Do.
113	Cesáreo Péres Marcías	125,000.00	115,000.00	10,000.00	
114	Ignacio Lópes Trujillo	336.00			
115	Matías Hernández	1,600.00	200.00	1,400.00	
116	Domingo González y González	150.00		150.00	
117	Juan Fariña Rodríguez	1,212.00	312.00	900.00	
118	Felice Lasus	7,628.00			
119	José Delgado García	600.00	200.00	400.00	
120	Leonardo de Corcuero	2,201.96		2,201.96	
121	Luis Revuelta	16,478.00			Withdrawn.
122	Salvador González	1,567.00	442.00	1,125.00	Award by umpire.
123	Ernesto González Pacheco	8,000.00			
124	Roque Hernández	12,180.00	8,180.00	4,000.00	Do.
125	Isaac Bensava	5,455.76	1,455.76	4,000.00	
126	Salomon Bensava	25,276.00	2,256.00	23,020.00	
127	Eduardo Bertran	56,380.00	15,513.00	40,867.00	Do.
128	F. Gornés Calafat	8,848.00		8,848.00	
129	Pablo Padrón Martínez	39,034.10	16,525.10	22,509.00	Do.
130	Leon Aburdaham	52,796.00	35,041.00	17,755.00	Do.
131	Agustín A. Luigi	2,820.00			Withdrawn.
132	Carlos Sánchez Gutiérres	28,766.50	6,766.50	22,000.00	
133	Agustín Rodríguez Martín	456,950.00	325,061.00	131,889.00	Award by umpire.
134	Damián Sans	6,435.00	2,435.00	4,000.00	
135	Ricardo Benito y Pedro Bartolomé.	42,756.00	11,756.00	31,000.00	
136	Pérez y Morales	4,180.92			Withdrawn.
137	Ventura Bante	6,400.00	2,133.00	4,267.00	Award by umpire.
138	Plácida Cerezo de Abad	3,000.00		3,000.00	
139	Daniel Hernández Rodríguez	19,072.00	4,768.00	14,304.00	
140	Manuel Placencia	920.00	420.00	500.00	
141	Francisco Abellan	26,046.16	16,046.16	10,000.00	
142	María del R. H. de Garriga	1,400.00			
143	Presbítero D. Chivéli	8,825.00	3,325.00	5,500.00	
144	Pilo Benain y Ca	4,710.00	3,243.11	1,466.89	Award by umpire.
145	Francisco Esteller	17,940.00	13,625.00	4,315.00	Do.
146					Do.
148	Juan Falcón Castellanos	8,162.00	5,162.00	3,000.00	Withdrawn.
150	Manuel Espejo	1,000,000.00			
151	Juan M. Vega	6,708.00	1,444.00	5,264.00	
152	Salomon y Jacob A. Levy	5,057.00	500.00	4,557.00	
153	Miguel Campos	12,106.00	5,454.00	6,652.00	Award by umpire.
154	José S. Benaim	253,500.00	178,500.00	75,000.00	Do.
155	Pedro García Olivo	19,368.00	8,644.00	10,724.00	Do.
156	Clemente S. Guerra y Ca	3,450.60			Withdrawn.
157	José Mesa García Suárez	40,832.00	20,832.00	20,000.00	
158	Juan Antonio Padrón R	9,162.00	3,427.00	5,735.00	Award by umpire
159	José Rodríguez	28,720.00			
160	Sebastian Alfonso	4,000.00	2,250.00	1,750.00	
161	José Tomás Padrón	2,730.00	1,365.00	1,365.00	Do.
162	Antonio Perez	1,734.00	734.00	1,000.00	Do.
163	Francisco S. Urroz	1,635.28	835.28	800.00	Do.
164	Blas Perez Dias	7,146.80	4,689.49	2,457.31	Do.
165	Francisco Roque Linares	1,164.00	264.00	900.00	
166	Ventura Punti	37,253.00	25,253.00	12,000.00	
167	José Fernández Blanco	5,959.00	3,959.00	2,000.00	Do.
168	Gerónimo Rodríguez	5,760.00	1,280.00	4,480.00	Do.
169	Ramón Pérez Macías	125,103.00	108,466.00	16,637.00	Do.
170	Juan Call y Morros	63,488.95	51,488.95	12,000.00	Do.
171	Juan Morales y González	1,138.00			
172	Ramón Graells	24,000.00	8,000.00	16,000.00	Do.
173	Simón Martínez Ageno	2,800.00	800.00	2,000.00	
174	Pascual Hernández	9,680.00	3,660.00	6,020.00	Do.
175	Cirilo Marcial	11,988.00	5,788.00	6,200.00	Do.
176	Enrique Dies Paz	9,000.00	3,705.00	5,295.00	Do.
177	Cristobal Serrano	20,180.00	9,602.00	10,578.00	Do.
178	Juan M. Jiménez	12,000.00	4,000.00	8,000.00	
179	Antonio Guadilla	1,441.00			
180	José María Alvarez	13,160.00	6,660.00	6,500.00	
181	Miguel J. Arizaleta	42,450.00	16,817.00	25,633.00	Do.
182	Rubén Chocron	8,669.75	1,450.38	7,219.37	
183	Leon Bentata	60,000.00	20,000.00	40,000.00	
	Total	5,307,626.98	2,158,473.35	1,974,818.41	

NOTE.—Claims Nos. 87, 146, 147, and 149 were presented to the Commission without any specific amount being claimed and were disallowed.

SWEDISH AND NORWEGIAN-VENEZUELAN MIXED CLAIMS COMMISSION.[a]

PROTOCOL, MARCH 10, 1903.

[Translation.]

Protocolo de un Convenio entre el Plenipotenciario de la República de Venezuela y el Enviado Extraordinario y Ministro Plenipotenciario de Suecia y Noruega en Washington, para el sometimiento á arbitraje de todas las reclamaciones no arregladas de ciudadanos de Suecia y Noruega contra la República de Venezuela.

La República de Venezuela y Suecia y Noruega, por medio de sus representantes, Herbert W. Bowen, Plenipotenciario de la República de Venezuela, y A. Grip, Enviado Extraordinario y Ministro Plenipotenciario de Suecia y Noruega en Washington, han convenido en el siguiente protocolo, el cual han firmado:

ARTÍCULO I.

Todas las reclamaciones poseídas por ciudadanos de Suecia y Noruega contra la República de Venezuela, que no se han arreglado por convenio diplomático ó por arbitramento entre los Gobiernos y que se hayan presentado á la Comisión más adelante nombrada por el Consul General de Suecia y Noruega en Caracas, serán examinadas y decididas por una Comisión Mixta que se reunirá en Caracas, y que constará de dos miembros, uno de los cuales habrá de ser nombrado por el Presidente de Venezuela y el otro por Su Majestad el Rey de Suecia y Noruega.

Protocol of an Agreement between the Plenipotentiary of the Republic of Venezuela and the Envoy Extraordinary and Minister Plenipotentiary of Sweden and Norway at Washington, for submission to arbitration of all unsettled claims of citizens of Sweden and Norway against the Republic of Venezuela.

The Republic of Venezuela, Sweden and Norway through their representatives, Herbert W. Bowen, Plenipotentiary of the Republic of Venezuela, and A. Grip, Envoy Extraordinary and Minister Plenipotentiary of Sweden and Norway at Washington, have agreed upon and signed the following Protocol:

ARTICLE I.

All claims owned by citizens of Sweden and Norway against the Republic of Venezuela which have been settled by diplomatic agreement or by arbitration between the Governments and which shall have been presented to the commission hereinafter named by the Counsel General of Sweden and Norway at Caracas, shall be examined and decided by a mixed commission, which shall sit at Caracas, and which shall consist of two members, one of whom is to be appointed by the President of Venezuela and the other by His Majesty the King of Sweden and Norway.

[a] No rules of procedure were formulated in this Commission.

Conviénese en que podrá nombrarse un tercero en discordia por Su Majestad el Rey de España. Si cualquiera de dichos comisarios ó el tercero en discordia dejare ó cesare de actuar, su sucesor será nombrado inmediatamente de la misma manera que su predecesor. Dichos comisarios y el tercero en discordia habrán de nombrarse antes del día 1° de mayo de 1903.

Los comisarios y el tercero en discordia se reunirán en la ciudad de Caracas el día 1° de junio de 1903. El tercero en discordia presidirá sus deliberaciones y será competente para decidir cualquier cuestión sobre que no estén de acuerdo los comisarios.

Antes de asumir las funciones de su cargo prestarán los comisarios y el tercero en discordia juramento solemne de examinar cuidadosamente y de decidir imparcialmente, conforme á justicia y á las estipulaciones de esta Convención, todas las reclamaciones á ellos sometidas, y de tales juramentos se tomará razón en el expediente de sus actos.

Los comisarios, ó, en caso de desacuerdo, el tercero en discordia, decidirán todas las reclamaciones sobre una base de absoluta equidad, sin atender á objeciones de naturaleza técnica ni á las disposiciones de la legislación local.

Las decisiones de la Comisión y en el evento de su desacuerdo, las del tercero en discordia, serán definitivas y concluyentes. Serán por escrito. Todos los fallos serán pagaderos en oro de los Estados Unidos ó su equivalente en plata.

ARTÍCULO II.

Los comisarios, ó el tercero en discordia, según el caso, investigarán y decidirán dichas reclamaciones, atendiendo solo á las pruebas ó informes que se suministren por los respectivos Gobiernos ó en nombre de ellos.

It is agreed that an umpire may be named by His Majesty the King of Spain. If either of said commissioners or the umpire should fail or cease to act, his successor shall be appointed forthwith in the same manner as his predecessor. Said commissioners and umpire are to be appointed before the first day of May, 1903.

The commissioners and the umpire shall meet in the city of Caracas on the first day of June, 1903. The umpire shall preside over their deliberations, and shall be competent to decide any question on which the commissioners disagree.

Before assuming the functions of their office the commissioners and the umpire shall take solemn oath, careful to examine and impartially decide, according to justice and the provisions of this convention, all claims submitted to them, and such oaths shall be entered on the record of their proceedings.

The commissioners, or in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature, or the provisions of local legislation.

The decisions of the commission, and in the events of their disagreement, those of the umpire, shall be final and conclusive. They shall be in writing. All awards shall be made payable in United States gold or its equivalent in silver.

ARTICLE II.

The commissioners, or umpire, as the case may be, shall investigate and decide said claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments.

Estarán obligados á recibir y considerar cualesquiera documentos ó exposiciones escritas que les sean presentadas por los Gobiernos respectivos, ó en nombre de ellos, en apoyo de cualquier reclamación ó en respuesta á ella, y á oir argumentos orales ó escritos hechos por el agente de cada Gobierno sobre cada reclamación. En caso de no concurrir en opinión sobre cualquier reclamación individual, decidirá el tercero en discordia.

Toda reclamación será formalmente presentada á los comisarios dentro de treinta días contados desde el día de su primera reunión, á menos que los comisarios ó el tercero en discordia en cualquier caso prorroguen el plazo para la presentación de la reclamación por tiempo que no exceda de tres meses. Los comisarios estarán obligados á examinar y decidir toda reclamación dentro de seis meses contados desde el día de su primera presentación formal, y, en caso de desacuerdo, el tercero en discordia examinará y decidirá dentro de un período correspondiente, contado desde la fecha del tal desacuerdo.

They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of or in answer to any claim, and to hear oral or written arguments made by the agent of each Government on every claim. In case of their failure to agree in opinion upon any individual claim, the umpire shall decide.

Every claim shall be formally presented to the commissioners within thirty days from the date of their first meeting, unless the commissioners or the umpire in any case extend the period for presenting the claim not exceeding three months longer. The commissioners shall be bound to examine and decide upon every claim within six months from the date of its first formal presentation, and in case of their disagreement the umpire shall examine and decide within a corresponding period from the date of such disagreement.

ARTÍCULO III.

Los comisarios y el tercero en discordia llevarán un registro exacto de sus actos.

Con ese fin, cada comisario nombrará un secretario versado en la lengua de ambos países para que los ayude en el desempeño de los negocios de la Comisión.

Excepto lo aquí estipulado, todas las cuestiones de procedimiento quedarán á la determinación de la Comisión, ó, en caso de desacuerdo, á la del tercero en discordia.

ARTICLE III.

The commissioners and the umpire shall keep an accurate record of their proceedings.

For that purpose each commissioner shall appoint a secretary versed in the language of both countries to assist them in the transaction of the business of the commission.

Except as herein stipulated all questions of procedure shall be left to the determination of the commission, or in case of their disagreement, to the umpire.

ARTÍCULO IV.

La compensación razonable de los comisarios y del tercero en discordia por sus servicios y gastos, y los demás gastos de dicho arbitraje, serán pagados por partes iguales por las partes contratantes.

ARTÍCULO V.

Para pagar la cantidad total de las reclamaciones que han de decidirse como queda dicho, y otras reclamaciones de ciudadanos ó súbditos de otras naciones, el Gobierno de Venezuela apartará con este fin, y no enajenará para ningún otro fin, empezando desde el mes de marzo de 1903, el treinta por ciento, en pagos mensuales, de las rentas aduaneras de La Guayra y Puerto Cabello, y los pagos así apartados se dividirán y distribuirán de conformidad con la decisión del Tribunal de La Haya.

En caso de no llevarse á efecto el precedente convenio, se encargará á funcionarios belgas de las aduanas de los dos puertos, los cuales las administrarán hasta que se hayan satisfecho las obligaciones del Gobierno Venezolano con respecto á las reclamaciones supradichas. El sometimiento de la cuestión supramencionada al Tribunal de la Haya, podrá ser asunto de un protocolo separado.

ARTÍCULO VI.

Todos los fallos existentes y no satisfechos en favor de Suecia y Noruega, serán pagados prontamente conforme á los términos de los respectivos fallos.

Hecho por duplicado en Washington, hoy 10 de marzo de 1903.

ARTICLE IV.

Reasonable compensation to the commissioners and to the umpire for their services and expenses and the other expenses of said arbitration, are to be paid in equal moieties by the contracting parties.

ARTICLE V.

In order to pay the total amount of the claims to be adjudicated as aforesaid, and other claims of citizens or subjects of other nations, the Government of Venezuela shall set apart for this purpose and alienate to no other purpose, beginning with the month of March 1903, thirty per cent in monthly payments of the customs revenues of La Guaira and Puerto Cabello, and the payments thus set aside shall be divided and distributed in conformity with the decision of the Hague Tribunal.

In case of the failure to carry out the above agreement, Belgian officials shall be placed in charge of the customs of the two ports and shall administer them until the liabilities of the Venezuelan Government in respect to the above claims have been discharged. The reference of the question above stated to the Hague Tribunal will be the subject of a separate protocol.

ARTICLE VI.

All existing unspecified awards in favor of Sweden and Norway shall be promptly paid according to the terms of the respective awards.

Done in duplicate at Washington this tenth day of March, 1903.

HERBERT W. BOWEN [SEAL]
A. GRIP [SEAL]

PERSONNEL OF SWEDISH-VENEZUELAN MIXED COMMISSION.

Umpire.—Ramón Gaytán de Ayala.
Swedish and Norwegian Commissioner.—Guillermo Valentiner.
Venezuelan Commissioner.—F. A. Guzmán Alfaro.
Venezuelan Agent.—F. Arroyo-Parejo.
Swedish and Norwegian Secretary.—Ch. Piton.
Venezuelan Secretary.—Luis Julio Blanco.

OPINIONS IN THE SWEDISH-VENEZUELAN COMMISSION.

The Christina Case.

Claim referred to umpire on question of the allowance of interest, the Commissioners having agreed upon the amount of the principal of the indemnity. Interest at 5 per cent allowed on the principal award for damages from the date that claimants were proved to have been in their right.

Gaytán de Ayala, *Umpire:*

The writer, umpire of the Swedish-Norwegian-Venezuelan Mixed Commission, constituted by virtue of the protocol signed at Washington on March 10, 1903, and named by His Majesty, the King of Spain, at the request of the Government of Sweden and Norway, states:

That the record filed to prove the validity and amount of the claim in question having been examined;

That the arguments presented in defense of the rights of their respective constituents by the commissioners of Sweden and Norway and Venezuela, and their opinions relating to the demand for the payment of interest on the amount allowed on the claim which the commissioner of Sweden and Norway presents;

Whereas it appears from the opinion of the Venezuelan commissioner:

That neither the diplomatic nor consular representatives of Sweden and Norway in presenting the *Christina* claim to the commission demanded interest on the sum claimed;

That the creditor has no right to interest for default, except when there has been a delay in payment chargeable to the debtor, and in the present case the delay which has transpired can not be charged to Venezuela, since the Government of the Republic has given notice that it was willing to satisfy the claim, provided it was reduced to a just amount;

That the Government of Venezuela was right in refusing to acknowledge as just the estimate of the damages and injuries made by the owner of the bark *Christina*, as is seen from the award of the commission, by virtue whereof only the fifth part of such claim has been allowed;

That the persistence on the part of the claimants in demanding excessive damages—more than has been agreed were their due—should be considered as the sole cause of delay; and therefore it is neither just nor equitable that Venezuela should be liable for the losses caused by the rash pretensions of said claimants;

That the Venezuelan commissioner calls the attention of the umpire to the rate of interest that is demanded in favor of the claimants, and to the date from which said interest should run, alleging with respect to the first point that the rate of 6 per cent per annum is very much too high, and with respect to the second that the claim was not officially presented to Venezuela until the month of September, 1895.

And whereas it appears from the opinion of the commissioner of Sweden and Norway:

That the fundamental spirit of all the protocols signed in Washington is to decide all the claims upon a basis of absolute equity, and that equity has no criterion of making satisfaction for damages and injuries except to reinstate the injured person in the same condition in which he would have been had the damages and injuries not occurred.

That in support of the foregoing doctrine he cites the general rules as to the payment of the claims approved by mutual agreement of all the representatives of the interested powers after and on account of the Boxer uprising at Peking, which rules provided, in Article I, section 5:[a]

> Persons who may have suffered damages and injuries as a consequence of the Boxer movement shall be restored to the situation in which they would have been had not the aforesaid uprising taken place.

That said principle is especially applicable to the case of the *Christina*, and that because there is question of damages committed in the year 1892, which was not decided until 1903, when they were estimated at one thousand pounds sterling, this circumstance implies, as against the perpetrator thereof, the obligation to pay interest for the time elapsed;

That he determines 6 per cent per annum as the rate of interest, relying therefore upon the facts that in Venezuela 18 per cent per annum is frequently paid, and that the commercial rate is 12 per cent per annum, and that it is certain that the owners of the *Christina* earned in their business a rate much higher than the said 6 per cent;

The writer, bearing in mind the foregoing opinions of the interested parties, and

Considering that even though the fact alleged by the Venezuelan commissioner be true—that neither the minister nor the consul-general of Sweden and Norway demanded interest upon presenting the claim under consideration—the fact that they did not do so does not involve the express or implied waiver of interest upon claiming specifically, since those officials in demanding a cash indemnity for the damages and injuries caused to their constituents did not abandon the rights that might arise by lapse of time during negotiations of the claim;

Considering that the right to demand the payment of interest arises in the present case out of the length of time it has taken the representatives of the two parties to agree upon the proper amount of the claim, but that said delay can not be attributed exclusively to the negligence or ill will on the part of Sweden and Norway, since on several occasions propositions of settlement were proposed which the Government of Venezuela rejected, for reasons which do not enter into the subject-matter of the discussion before this commission;

Considering that it is a principle of justice universally recognized that the measure of damages should be made coextensive not only with the material direct damages suffered by the injured person, but also with the profits of which he has been deprived;

Considering that when there is question of ascertained sums of money the profits of which the injured party has been deprived are

---

[a] Examine Foreign Relations for 1901 (Appendix), p. 107.

compensated for by the payment of interest which may be general or special, as the case and circumstances connected with the nature of the business in which the interested party devoted himself;

Considering that in cases like that of the *Christina* it is proper to allow interest at the rate generally adopted in the negotiations of owners of ships;

Considering that the legal interest of 3 per cent per annum urged by the commissioner of Venezuela is only applicable by virtue of specific stipulations, or in case of loans of money under absolute security, and not when there is question of industrial or commercial undertakings in which this requisite is necessarily lacking;

Considering that Venezuela pays its creditors interests varying in rate between 9, 6, 5, and 3 per cent per annum, according to the circumstances and sort of the debt;

Considering that the Venezuelan commissioner in calling the attention of the umpire to the rate of interest which the honorable commissioner of Sweden and Norway demands, shows secondarily how it is possible to allow interest in accordance with the principles of justice and equity which are to inspire this decision;

Considering that these very principles of equity and justice hold that interest should be allowed the injured party by reason of the damage suffered from the day when the party causing the injury incurred the inherent liability to pay the same, and that this liability should be considered as fixed in the case of the *Christina* from the day on which the owners and claimants herein proved their blamelessness for the act which gave rise to the detention of said bark;

Whereas Article II, paragraph 1, of the protocol signed at Washington by the representatives of Sweden and Norway and Venezuela on March 10, 1903, the commissioners of the two interested parties agreed upon the amount of the indemnity which ought to be allowed the claimants and fixed it at one thousand pounds, sterling;

Whereas by the disagreement of the commissioners with respect to the payment of interest on the one thousand pounds sterling agreed upon as the amount of the claim, and as a consequence thereof by the disagreement concerning the rate of said interest and concerning the time from which it should run, the writer is required to decide the foregoing disagreements, and bearing scrupulously in mind the provisions of Article I, paragraph 3, of the protocol above mentioned, which says:

> The commissioners, or in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature, or of the provisions of local legislation.

He decides—

1. That interest should be paid.

2. That the rate of interest shall be 5 per cent per annum, which is the rate that Venezuela pays commercial companies on her external debt.

3. That interest should begin to run from the day when the blamelessness of the claimants in the act which caused the detention of the *Christina* was proved; that is, from the 7th day of July, 1892, until the date of the present award.

BOVALLINS AND HEDLUND CASES.

In case of the commission of a crime in the territory of a State the State is bound, without being requested, to prosecute the criminals before the proper local authorities, and in case of failure of the country to prosecute the wrongdoers it will be held liable in damages to those who have suffered.

A State is responsible in damages committed by revolutionists where it subsequently appoints the participants and leaders of the revolution to office, thereby tacitly approving their conduct.

Where it is shown that documentary evidence can not be produced, the statements of witnesses will be accepted.

GAYTÁN DE AYALA, *Umpire:*

The writer, umpire of the Mixed Swedish and Norwegian Claims Commission, organized at Caracas by virtue of the protocol signed at Washington by the representatives of the two interested nations on March 10, 1903,

Requested by the commissioners of Sweden and Norway and Venezuela to render the award which equity and justice require concerning the claims of the Swedish and Norwegian subjects, Carl Bovallins, Henry Hedlund, and Edwin Bovallins, for the amounts and because of he reasons hereinafter expressed.

Carl Bovallins:		
For cash and articles paid for by him	£875	
For injuries	10,000	
		10,875
Henry Hedlund:		
For clothes, jewels, papers, etc	£130	
For imprisonment and injuries	10,000	
		10,130
Edwin Bovallins:		
For personal property, cash, and effects	£351–10	
For personal suffering	10,000	
		10,351–10

Having examined the documents produced to prove the validity and amount of these claims;

Having considered the arguments presented by the commissioners of Sweden and Norway and Venezuela in support of the rights and obligations of their respective constituents;

Having weighed the argument presented by the agent of Venezuela and the report of the commissioner, Dr. T. A. Guzmán Alfaro; and

Considering that the forcible attack by an armed force and other facts set forth by the claimants are proved;

Considering that if the opinion of the agent of Venezuela that the perpetrators of the violence were wrongdoers and sharpers be accepted, it would follow that the obligation of prosecuting and punishing the criminals rested on the competent local authorities, without its being necessary that any request be made by the injured parties for that purpose;[a]

Considering that at the time when the acts complained of were committed, and since then, the delinquents have not been chastised or prosecuted, but, on the contrary, their principal leaders have occupied for some time official positions, having been appointed by the present

[a] See Poggioli case, p. 847.

Government of Venezuela, and that they are cloaked with authority in the very region where the events took place;

Considering that this circumstance is sufficient in itself to show that the claimants have not been able to address themselves to the local authorities for the purpose of taking the testimony necessary to legally prove the damages and injuries suffered;

Considering that during the greater part of the time elapsed since the outrages occurred until to-day the region where they transpired has remained in a state of war;

Considering that all the acts perpetrated by the authors of the sackage, of which the Orinoco Shipping and Trading Company was the victim, induce one to characterize the bands of armed men in question as revolutionists;

Considering that the Government of Venezuela, by conferring various public offices in the government of the country upon the principals of the said revolutionary forces, tacitly approves their conduct, and according to the principles recognized by public law makes itself responsible for all the acts done by them;

Considering that the persons who assaulted the offices of said Orinoco Shipping and Trading Company, burned and destroyed all the books and documents belonging to the same and to its employees, depriving the latter of the means of producing written detailed proofs of the damages and injuries suffered;

Considering that the claimants have presented the only ones which they could obtain and that they concur in their respective statements sworn to before the competent consular authorities;

Considering that the agent of said company in that region, Carl Bovallins, was absent from Venezuela when the outrages complained of occurred, and that therefore he has no right to the indemnity with respect to the damages like those suffered by his brother, Edwin Bovallins, and by Henry Hedlund, which he demands in his complaint;

By reason of everything stated, and in the name of equity and justice, the umpire decides:

That the Government of Venezuela should pay—

To Carl Bovallins for loss of cash and personal effects	£200
To Henry Hedlund for loss of money, clothes, jewels, and private documents.	130
For eight days in prison, for sickness contracted thereby, and loss of time.	400
	530
To Edwin Bovallins for the loss of money and personal effects	240
For five days in prison, bodily sufferings, and loss of employment	400
	640

NOTE.—In this commission Mr. Christian Anker, owner of the Norwegian bark *Christina*, made claim for £5,000, consisting of the following items:

For the maintenance of the captain and crew for four months during their detention	£1,000
For the use of the ship in transporting troops during this time	2,000
For the loss of an advantageous charter	1,000
For damages caused to the ship during the transportation of troops	1,000
	5,000

The commissioners disagreed with reference to the allowance of interest from the date of the seizure of the vessel, but agreed in the allowance of £1,000 on the claim.

In the claim of Serine Meling, payment of 84,600 crowns was asked on account of the death of her husband, commander of the steamship *Jotun*, caused by the discharge of artillery upon the vessel at St. Felix on the 11th of June, 1902. The commissioners allowed on this claim the sum of 71,520 crowns.

The claim of the Ydun Life Insurance Company, because of the life-insurance policy which the company had paid to the widow of Captain Meling, was disallowed.

The claim of Messrs. Madsen and Jespersen, owners of the steamer *Jotun*, was for the sum of 4,379.31 crowns, on account of damages caused them by the death of Captain Meling, who commanded the ship. On this claim the sum of 1,244.61 crowns was allowed.

SUMMARY OF CLAIMS.

Number.	Name of claimant.	Amount claimed.	Amount disallowed.	Amount allowed.	Remarks.
		Bolivars.	*Bolivars.*	*Bolivars.*	
1	Christian Anker	126,250.00	101,000.00	25,250.00	
2	Serine Meling	116,748.00	18,050.40	98,697.60	
3	Madsen and Jespersen	6,043.45	4,325.89	1,717.56	
4	Norwegian Insurance Company	6,908.28	6,908.28	.....	Rejected.
5	Carl Bovallius	274,593.75	269,543.75	5,050.00	Award by umpire.
6	Edwin Bovallius	261,375.37	245,215.37	16,160.00	Do.
7	Henry Hedlund	255,782.50	242,400.00	13,382.50	Do.
8	Interest on Anker claim	.....	.....	14,101.42	Do.
	Total	1,047,701.35	887,443.69	174,359.08	

APPENDIX.

VENEZUELAN YELLOW BOOK, PP. 5–46.

Part First.

GERMANY.

THE MINISTRY OF FOREIGN RELATIONS OF THE UNITED STATES OF VENEZUELA.

The document entitled "Papers relating to the Foreign Relations of the United States," published annually by the Department of State of Washington, contains, in its last issue corresponding to December, 1901, but not placed in circulation until several months thereafter, a memorandum presented by the Emperor of Germany to the Secretary of State on the 11th of that month, in which there are stated reasons or grounds held by the Imperial Government for a contemplated coercive or comminatory action against the Republic of Venezuela. In that paper, the purpose of coercion is based on the refusal of the Venezuelan Government to permit that powers foreign to the nationals take part in the examination, classification, or mode of payment of the claims that various German subjects have presented or reserve the right to present, for alleged losses or damages sustained during the last wars, since 1898. While the text of the memorandum makes unfavorable remarks about the Venezuelan magistrates of the judiciary, whose office it is to pass upon the nature of these claims, it sets forth the resolution of the Imperial Government to present the claims itself, as finally examined, in order that they be accepted in that form by Venezuela, whether willing or not.

In consequence of the above-mentioned publication the Government of the Republic is now confronted by a document by which it is seriously affected, and of whose spirit and tendency it was entirely unaware. On the other hand, it had occasion to be surprised at the form of the memorandum, in view of the cordiality that the respectable Government of Berlin is imparting to its relations with that of Venezuela; relations in which there had not been theretofore, as proved by the archives of the department of foreign relations, any lack of the evidence of reciprocal sincerity, on which is based the more or less reliable token of culture that may be exchanged among civilized nations.

The paper of the German ambassador, once known to Venezuela, can not be allowed to pass without the protest resulting from its contravening maxims of strict equality that international law advocates as a principle of harmony among the States of the civilized world. From one fact alone, explicable in itself, the imperial official draws his imputations, and from a mere supposition, offensive because inconsistent, it deduces the duty of exercising intervention foreign to the laws in the prosecution and settlement of cases of German subjects. The fact, that is to say, the refusal of the Government to lay aside, on every occasion, the powers of national sovereignty, can be looked upon by no one except in the light of imperative necessity, consubstantial with the very existence of the State, and the aggravating supposition, that is to say, the presumed partiality of the Federal court, the body representing the highest judiciary in Venezuela, is not to be considered except as an unfortunate or accidental remark without any foundation in truth, without the slightest reason to defend it. There never was, as seems to be supposed by the ambassador, any of its members dismissed. The change is made, in each case, by virtue of the law, and in the established form for the appointment of new members.

The views and arguments advanced by the Republic since the beginning in support of its refusal to accept diplomatic action in the settlement of claims of the Empire have never been refuted, not even incidentally. There are on record, in a long correspondence of the imperial legation at Caracas, now for the first time given to the

ress for a correct appreciation by all friendly Governments, as well as for the foundation for a protest of Venezuela against the manner in which facts are represented in the memorandum of the ambassador. In that series of diplomatic notes, the Empire rested its case not only on the law of the country, which, as such, gave sufficient force to the argument, but on the best recognized rules of modern international law on the opinion of eminent European and American writers, on the legislation of other countries, Germany, herself, among others, and on the ideas and circumstances which no fair Government can ignore, when it has to examine claims with due regard to all those concerned. It never was the intent of the Republic, in that correspondence, to impose its will arbitrarily and capriciously, nor did it intend, as the ambassador seems to suppose, to evade sacred obligations in a frivolous manner, but to hold the ground it has stood on since its advent to political life, for natural and judicious reasons. Obligations are repudiated by declining to listen to the reasons, or precedents on which these obligations are founded, not by opening, as Venezuela did, a legal field for their complete fulfillment. The question therefore resolves itself into a simple one of form, but if the form adopted were not that provided by its laws, the Republic would see in it something akin to a disregard of the national sovereignty. The Imperial Government, according to the language of the ambassador, wishes to examine and decide for itself, and by itself, the character, amount, and mode of payment of claims connected with property or interests established in the Republic of Venezuela. The Venezuelan Government, supported by its constitution and the regulations, maintains that such procedure can not be granted to any but the respective national powers. The intent indicated by the ambassador, evinces, to say the least, an excess of protection contrary to the universal principle of law, which subjects property, real and personal, to the regulations and laws of the country where it is situated. Fair and impartial consideration can find nothing in the attitude of Venezuela except the obligatory exercise of a political power, and the discharge of a duty depending thereon. A relinquishment of the same would be tantamount to a denial by the nation of the efficiency of its laws for the due protection of the general interest.

To legislate for the natives only, and to leave open for foreigners the application of a special law, enforced through the intervention of representatives from other countries, would expose countries whose destiny is to grow from immigration to degenerate into mere settlements lacking the essential quality of political states, a position they hold in the international concert. Indeed more than one European statesman has called attention to the flagrant injustice that flows occasionally from the forcible protection of interests that are not absolutely legitimate or which the proconceived intent to take advantage of the internal disturbances of certain foreign countries may have in some way contributed to make apparently legitimate. If by exceptionally waiving the local laws, the matter of claims was allowed to be made one of mere diplomatic action, the simultaneous effect might be a constant injury to the internal sovereignty and a ceaseless threat to the national treasury. As it is not to be presumed that the foreign governments and their honorable political representatives may assume judicial powers to establish in the course of a regular trial the true character, the lawful origin of the actual status of any claim, there would be frequent and regrettable occasions to see the high person of a State appearing to favor, unwittingly but strenuously, designs inconsistent with either justice or reason.

The memorandum of the ambassador affords in one of its parts the best evidence of the inapplicability of diplomatic action to matters that appertain to the courts of the country. It cites, as a serious argument against the attitude of Venezuela, one of the claims submitted to the board for 3,800 head of cattle, the value of which was made to amount to 600,000 bolivars. The data submitted by the claimants showed the demand to be so abnormal that the board could find no ground for an award except in an infinitely smaller sum. The parties in interest were engaged in cattle raising as a part of their business, and supported the main part of their claims with a comparative statement of previous inventories, and the subsequent condition in various stock farms, without any other evidence as to the number of oxen than the testimony of three persons, two of them Germans, who witnessed the statement, and a certificate of the imperial consul at Valencia regarding the original number of cattle in several pasture grounds, some of them owned by citizens of the Republic. The time between the original inventory and the ascertainment of the remainder, showing a loss of 2,652 oxen, all charged to the Republic in the claim, ran, as represented, from the 9th of September, 1899, to the 4th of March, 1900. During the month of December of the first-named year, the Government, as shown by an official document filed in the archives of the ministry of the treasury, purchased 1,000 oxen from the very same stock farm, for which it ultimately paid in cash a much lower price, set by the sellers or the owners of the herd themselves; wherefrom two equally

grave inferences may be drawn, to wit, that there were included in the conjectural computation on which the claim rested a large number of oxen previously sold, and that the value of the herd was set down in the memorial at a price nearly double that which was asked by the same claimant in other transactions.

These incidents should suffice to demonstrate the necessity of acting and proceeding, in matters affecting the treasury and in which the judicial responsibility of the nation is invoked as a factor of prime importance, in a manner more consonant with the law and less exposed to an abuse of the status of the claimant. The same firm which the imperial memorandum holds to be so clearly in the right, added in the memorial, to the value of the cattle, fixed *ad libitum*, without any other basis than the opinion of certain military commanders in regard to a slight portion of the same, the enormous sum of 200,000 bolivars under the head of profit lost on account of the seizure.

It is to be observed that the Venezuelan law which regulates the mode of preferring claims against the nation, does not admit testimonial proof unless it can be shown that the officer who caused the damage refused to give the voucher in the case, or that it was impossible to obtain it in good time. Without a formal trial in which interests are involved that have to be defended simultaneously, as those of the nation and of the claimant are in such case, there can be no regular judgment, unless the alleged right be established *prima facie* by simple and natural conclusion. Therefore, the decree of January 24, 1901, which the ambassador's memorandum criticises so sharply, left, with praiseworthy foresight, the way open to all claimants for all just redress.

In the regular intercourse of civilized nations, there occurs no difference when the matter submitted to mutual examination is defined or provided for by the absolute principle of national sovereignty. If the class of claims relating to property owned within the territory does not come exclusively under the law of the country, it would behoove the other party to prove it by representing such a statement as would upset all maxims, arguments, and opinions advanced by Venezuela. As for the rest, the coercion hinted at in the memorandum would be inadmissible for the lack of the slightest grievance on which to base it; contrary to law, because bent of the achievement of a purpose satisfactorily provided for by the laws of the country; unusual because brought into operation without any alteration of the mutual cordiality between the Government exercising it and that to which it would be applied; and contrary to its intent in its effects, because endangering in favor of a few the interest of others, which perhaps are more worthy of consideration on the part of the Imperial Government, as are those of all respectable Germans settled here, who are so peace loving, and always so deeply interested in seeing that no obstacle will be raised against the development of trade between their Fatherland and Venezuela.

In laying the just protest of the Republic against the views, imputations, and the purposes of the memorandum of the 11th of December last before all friendly powers, as well as the German Empire itself, in this document, it is imperative to add that Venezuela, while objecting to the intrinsic animus of the ambassador's communication, finds, and could as an independent nation but find, in the ostensible object of its being represented to the Government at Washington, nothing but the rational effect of a political principle of a general character bearing on the integrity of the rights of the American Hemisphere, which must always receive the joint or independent support of all the sovereign republics of the New World, and to which is already due in part the organization of the two international congresses convened on the powerful initiative of the Great Republic of the North.

CARACAS, *August 12, 1902.*

The minister of internal relations in charge of the correspondence of foreign relations.

R. LOPEZ BARALT.

ACCOMPANYING DOCUMENTS.

Correspondence with the imperial legation of Germany, 1900–1901–1902.

[Translation.]

No. 161.] IMPERIAL LEGATION OF GERMANY IN VENEZUELA,
Caracas, April 11, 1900.

MR. MINISTER: I have the honor to transmit herewith to your excellency, so that you may be so good as to take notice of it, a copy of the communication which the

management of the Great Railroad of Venezuela forwarded on the 9th instant to the minister of public works, a statement, substantiated in detail, of the losses sustained by the said railway in connection with the last civil war until the end of last year. The bill amounts to 780,274.99 bolivars. In view of the fact that the imperial legation has received from other quarters indemnity claims for damages from the same cause, I should be especially thankful to your excellency if you would be so good as to communicate to me, for the provisional information of the interested parties, and as far as it may be deemed practical, what are the intentions of the Venezuelan Government in regard to the payment of indemnity claims growing out of the last civil war.

Accept, excellency, the assurance of my most distinguished consideration.

SCHMIDT LEDA.

The Most Excellent Minister of Foreign Relations of the United States of Venezuela Dr. ANDUEZA PALACIO.

No. 606.] MINISTRY OF FOREIGN RELATIONS,
BUREAU OF PUBLIC LAW,
Caracas, May 10, 1900.

MR. MINISTER: Your excellency, while mentioning in your polite note of April 11 last a claim presented to the department of public works, by the management of the Great Railway of Venezuela, inquires what are the intentions of the Government in regard to claims for damages caused by the last civil war. The Supreme Chief of the Republic, to whom I have been unable until yesterday to refer your excellency's request, on account of certain matters that have engrossed the cabinet's attention, has declared to me, and I very respectfully transmit his statement to your excellency, that the decree issued on the 23d ultimo, relative to the time when claims growing out of the war shall be received for examination, states the position now held in regard to the matter dealt with in your excellency's note.

I tender to your excellency due apologies for the delay in answering your note, and at the same time renew to you the professions and assurances of my most high and distinguished consideration.

R. ANDUEZA PALACIO.

The Most Excellent Dr. SCHMIDT LEDA,
Minister Resident of the Empire of Germany.

[Translation.]

No. 302.] IMPERIAL LEGATION OF GERMANY,
Caracas, May 30, 1900.

MR. MINISTER: I have had the honor to receive the esteemed note of your excellency of the 10th instant, relative to the settlement of claims growing out of the last civil war.

In the meanwhile, I have acquainted my Government with the decree bearing on this subject, which was published in the Gaceta Oficial of the 23d of April of this year, and I am instructed to inform your excellency that the Imperial Government can not allow the said decree to influence in any way the attitude it may see fit to assume in regard to claims of German proteges.

Accept, excellency, on this occasion, the renewed assurance of my most distinguished consideration.

SCHMIDT LEDA.

The Most Excellent Dr. R. ANDUEZA PALACIO,
Minister of Foreign Relations of the United States of Venezuela.

[Translation.]

IMPERIAL LEGATION OF GERMANY IN VENEZUELA.

(PROMEMORIA.)

(Confidential.)

The minister resident of the German Empire, has had the honor to expound orally to the Venezuelan Government the objections of Germany to various dispositions of

the decree of the 24th of January of this year concerning the settlement of claims growing out of the war.

The objections bear on the following points;

1. The decree admits to examination only such claims as originated since the 23d of May, 1899. Germany desires that claims which arose prior to that date be also taken into consideration.

2. Under the decree, payment of the claims is to be effected by means of certificates of a new debt to be created by the revolution. From the experience of past years, this mode of payment does not seem to be acceptable. The German Government rather hopes that it will be practicable to reach, with the Venezuelan Government, an agreement for another mode of payment.

3. Article 4 of the decree sends the claimants, who may not declare themselves satisfied with the decision of the Commission, before the high Federal court, in accordance with the provisions of the decree of February 14, 1893.

The German Government is not ready to subject to the provisions of this decree the indemnity claims of its proteges. It would rather have the functions of the Commission confined to the *examination* and *proof* of the claims, and reserve the final determination of the amount to be allowed to each claimant for a free and amicable arrangement between the Venezuelan Government and the imperial legation.

The sum total of the claims thus far made known to the imperial legation amounts to something like 2,750,000 bolivars. The Imperial Government sincerely cherishes the wish that it will reach, as soon as it can be done, an agreement with the Venezuelan Government concerning these claims, and deems it natural that they should immediately be examined, as to their validity, by the Venezuelan authorities.

The imperial legation, therefore, will make no difficulty in urging the German claimants to lay, without delay, their claims before the Commission created by the decree of the 24th of January of this year, as soon as an agreement shall have been effected to the effect that the functions of the Commission shall be confined to the certification of the claims, but that the final decision regarding their settlement shall be reserved for a direct agreement between the Venezuelan Government and imperial legation; which agreement will have to cover specifically:

1. The final determination of the sums to be paid.
2. The mode of payment.
3. The settlement of the claims dating from a period earlier than the 23d of May, 1899.

CARACAS, *March 8, 1901.*

MINISTRY OF FOREIGN RELATIONS OF THE UNITED STATES OF VENEZUELA.

(Memorandum.)

(Confidential.)

After careful consideration of the confidential memorandum of the honorable legation of Germany, dated the 8th instant, and presenting its views concerning the decree of the 24th of January last for the settlement of claims growing out of the war, it is found, with regret, that all its remarks revolve around an idea to which it is impossible to assent without detriment to the general principle that secures to every state the right to establish its own domestic legislation. On the one hand, the memorandum tends to deny the judicial validity of the law of February 14, 1873, regarding the manner of preferring claims against the nation, and, on the other hand, endeavors to restrict, in a certain sense, the action of the Government as affecting the claims submitted to the board of classification, recently created. Such ideas, which amount to making an exception in favor of German interests in the Republic possible, could be entertained if there were two legislations in existence—one intended to govern the interests of the Nationals and another relating to the property of foreigners. No long meditation is necessary to realize the grave injury that would be done by such a dual legislation to the nations, like the greater part of those in America in whose development foreign immigration and the influx of foreign capital are important factors. In the course of a few lustres the inequality of conditions between natives and foreigners would create numberless difficulties which would go so far as to make national sovereignty a mere illusion of fancy.

It is a maxim of sound logic, demonstrated by science and confirmed by practice, that the most positive results toward the desired social harmony are obtained from equality in the operation of justice. If a state should admit in its statutes governing any one point articles intended respectively for various classes, every judicial doctrine would eventually be overturned by special exemptions and privileges, born of

concessions foreign, and even antagonistic to the political concert of nations. The difference in the civil status between them (the nationals and the aliens) would involve ceaseless conflicts which could not be kept within bounds, even through the harmonious action of the powers intrusted with the duty of enforcing the law.

The desire to remove forever any apprehension in that respect gave occasion for many important debates in the celebrated International American conferences of 1889–90. It gave birth to the principle of absolute equality of civil rights for nationals and aliens, which received the approval of fifteen of the delegations there present, and was immediately embodied in the Venezuelan constitution. The principle not only observes and follows the soundest doctrines of international law, but wards off the grave difficulties that would necessarily arise from the gradual increase of the stream of immigration which for years has been flowing from Europe to the American regions. The existence of this principle at once guarantees to the foreigner the enjoyment of his property in foreign lands without any greater risk than that shared by all his associates, frees him, to his great material and moral advantage, from any bias on the part of the ruler or the owner of the soil he treads, and makes of him a sound and desirable element, capable of cooperating, for his own good, in the work of general advancement. Hence the law of February 14, 1873, far from affording the slightest ground for difficulties, constitutes, both in practice and law, the fulfillment of a necessity.

It was communicated to the Government of the German Empire, as well as to all foreign governments, by means of a note addressed to the Hon. von Gulich on the 22d of that month, under No. 77 of the first division. Its text did not establish the slightest discrimination in favor of the natives, and the judicial body that was given cognizance of claims was then, as it is now, the highest in the Republic, so that it had in view not only the importance of the case, but also the facility of procedure. The promulgation of the laws which affect interests established in the territory is but the operation of immanent sovereignty. No government or state can protest against such operation without injury to one of the most generally recognized and universally practiced maxims of international law. It would be easy to invoke authorities *ad infinitum* in its support, but let it suffice to name the German Heffter, the Englishman Twiss, and the American Wheaton, all three writers of distinguished renown. The first declares that "the laws of each state govern all property of any nature whatever found within the territory" (par. 3811). The second affirms that "the right of civil and criminal legislation touching all property and persons within the territory of a nation is inherent in the right of dominion." He adds: "The laws of each nation bind, of natural right, all property lying within its territory in the same way as the persons residing therein, *whether natives or aliens*, and govern and regulate all acts performed and all contracts executed within its boundaries" (par. 150). Wheaton is just as explicit. According to him (par. 78) "the principle under consideration is the immediate consequence of the independence of nations Every nation (he says) possesses and exercises exclusive sovereignty and jurisdiction over the whole extent of the territory, whence it follows that the laws of each state govern, of right, all property, real and personal, within its territory, in the same way as the inhabitants of the territory, whether natives thereof or not, and affect and regulate all the acts performed or the contracts executed within its boundaries."

The practice of conferring upon the high courts the cognizance of acts that may give rise to claims because attributed to public agents is not exclusively that of Venezuela. The law of judicial organization of the German Empire, promulgated on the 27th of January, 1877, retained the provisions of the states in which it was held that actions against public officers were more or less absolutely subordinated to the previous decision of a superior authority, with the proviso that such a previous decision be confined to determining whether the officer had exceeded his powers or neglected to perform any of his duties and with the additional condition that the decision be given by the higher administrative tribunal of the state, or in the absence of such a tribunal, by the supreme court of the Empire. (Art. 11.)

In his study of the latest imperial legislation Demonbynes notes (Chap. IV, Sec. IV) that the civil court takes cognizance in the first instance, among other cases, of claims preferred against officials of the Empire on account of abuse of power or neglect. Further on, dealing with the claims that every state may turn over to the local courts, he cites those preferred against the state itself, on account of measures taken by the administrative authorities or of faults imputed to officials.

Over forty years ago there was organized in the United States the so-called "Court of Claims," to which are referred all the petitions or bills asking or providing for the satisfaction of private claims against the Government, based on some act of Congress, or some contract, express or implied, etc. This court has the power to lay down rules for its government; it may punish for contempt, appoint commissioners, and

exercise such authority as may be necessary to give effect to the powers that are conferred upon it. * * * Its decision in any case prosecuted in conformity to the provisions of the law bars forever any subsequent claim or action against the United States arising from the matter involved in the controversy. (Revised Statutes, secs. 1060, 1070, 1093).

Indeed this method of dealing with and deciding questions which, from their nature, can not be conclusively examined in any department of executive power is both wise and practical. The judicial hearing, to which recourse must unavoidably be had in many cases of claims, excludes, or makes impossible, executive action which can not be brought into play except within the bounds defined by law for each concrete case, beyond any formula of investigation. The necessity of resorting, generally, to the procedure indicated by the law of February 14, 1873, lies in the various circumstances of the claims, in the abnormal conditions under which they arise at times, in the objections that may be created by a disposition to exaggerate facts, and in other reasons which demand the attention of the legislators, and were no doubt present to the mind of the editors of the latest Civil Code of the German Empire when they laid down in article 254 the following provident rule:

"If the aggrieved party should, by some fault of its own, have contributed in causing the damage, the obligation to indemnify and the amount of the indemnity shall depend on the circumstance, especially on that of knowing whether the injury was caused chiefly by one party or the other.

"This provision shall also be applicable when the fault of the aggrieved party merely consists in having failed to call the attention of the delinquent to the risk of inflicting injury of which the offense had not or was not bound to have knowledge, or in omitting to evade or minimize the injury."

Article 343 of the same code, on account of its analogy with the subject-matter, likewise seems to be worthy of record:

"If the penalty measured should be out of proportion to the injury, the debtor may ask that it be reduced to an equitable amount. In appreciating this amount, the court shall take into account not only the pecuniary interest, but also any other legitimate interest of the creditor."

Prince Bismarck was no doubt inspired by considerations of a nature similar, in a certain way, to that which makes it indispensable to apply judicial proceedings to the investigation of the origin of certain claims and to the proof of their validity, when he expressed the view communicated in February, 1884, to the Hon. Mancin by the Count de Launay, and inserted under No. 27, among the documents laid before the Italian Parliament by the royal ministry of foreign relations, on the 6th of December, 1894. "The Prince [wrote de Launay] refrains as much as possible from injecting the policy of Germany in anything that may smack of intervention in favor of speculators who undertake transactions in a foreign country, with a full knowledge of doing so for their account and at their risk." And while the respectability and the manly deportment of the Germans settled in this country could not suggest the idea that, in regard to their claims, there could exist cases like those which the eminent German statesman had in mind, this view goes far, on account of its scope and practical import, to add great strength to the reasons on which the legislator based his action when he gave to the highest judicial body of the country cognizance of the claims preferred by the nationals or the foreigners.

The foregoing makes it clear that the law of February 14, 1873, apart from the undeniable right with which it was promulgated, from the weighty precedents that sanction it, and from its value as integral part of the domestic legislation of Venezuela, combines the only conditions of procedure that are available to prosecute any claim against the Republic by the way of justice.

If a departure was made in 1893, and at the present time, from its provisions, and a special rule established for the examination and classification of the claims growing out of the war, the fact finds its explanation beforehand in the exceptional character of the case which was the transformation into a government of what had originally been a revolution.

As soon as the claims presented by German subjects should come to be examined under other conditions than those provided by statute for the others, the doctrine maintained by Venezuela, touching the equality of civil rights for natives and aliens, and which is part of her constitution, would receive a severe blow. Neither the law of February 14, 1873, nor the decree of January 24 last, can operate adversely to the rights of those who propose, or have, to prosecute claims growing out of the recent war, all the less as the procedure indicated for all those that may be submitted to the board of classification must prove uniform in its course and effects. Moreover, the Government foreseeing cases exceptionally of a negative character has left the

judicial way opened, with its well-known rules, to all those who may propose or believe themselves entitled to the redress of some right.

By reason of these practices and principles and of the situation necessarily created by them, it is unable to concur in the views of the respectable imperial legation concerning the alleged inefficiency of the law of 1873, for the purpose of passing upon applications of this character, nor is it practicable to assent, in regard to the German claims growing out of the last war, to the proposition of restricting the action of the board of classification that is to take cognizance of them; and as for the claims anterior to the 23d of May the same law of 1873 points out the way.

CARACAS, *March 19, 1901.*

[Translation.]

No. 190.] IMPERIAL LEGATION OF GERMANY IN VENEZUELA,
Caracas, March 24, 1901.

MR. MINISTER: I have seen with regret, from the esteemed confidential memorandum of the 19th of this month, that the Venezuelan Government is not disposed to enter into an agreement for the settlement of German claims growing out of the last civil war in the manner that I had suggested, in accord with my Government, in my memorandum of the 8th of this month. Under the circumstances I have been instructed by my Government to declare that, as regards the interests of its protégés it finds itself constrained to refuse its assent to the decree of the 24th of January of this year, relative to the organization of a commission for the examination and determination of the claims. This dissent also applies to the Executive decrees of February 14, 1873, and June 9, 1893, whose dispositions can not be considered as binding by Government in the settlement of the German claims.

While having the honor to bring the foregoing to the knowledge of your excellency, in obedience to the Imperial Government's instructions, I avail myself of the opportunity to renew to your excellency the assurance of my most distinguished consideration.

SCHMIDT LEDA.

The Most Excellent Minister of Foreign Relations to the United States of Venezuela, DOCTOR BLANCO.

No. 404.] MINISTRY OF FOREIGN RELATIONS,
BUREAU OF FOREIGN PUBLIC LAW,
Caracas, March 30, 1901.

MR. MINISTER: In replying to your note No. 190, of the 24th instant, I can not conceal from your excellency the surprise experienced by the Chief of the Executive and the whole Government on finding that it made no mention of the principles of international law which warrant and vindicate the dispositions taken by the Venezuelan Government in the matter of claims for acts imputed to officers who act or have acted in their public capacity. The honorable German legation, ignoring all the views, precedents, and arguments set forth in the memorandum of the 19th, and which affirm the principle of strict sovereignty on which Venezuela based her promulgation of the existing regulations on the subject, comes out, in its reply of the 24th, with a denial, in the name of its Government, of the validity of the long-standing laws of the Republic, without any other ground in justification thereof than that which might be taken in an effort to create a discrimination, objectionable because prejudicial, unjust, and antijudicial, between the foreigners who come to a country and the natives of that country.

It can not escape the enlightened judgment of your excellency, or the learned discernment of the Imperial Government that it is impossible to admit, in the order of relations that regulate and maintain the moral intercourse of nations, practices or principles apt to redound to the detriment of the domestic sovereignty of one of them. Hence does the Government of the Republic, while it fully appreciates its harmonious relations with Germany, and values as a most beneficial factor the gradual increase in this territory of the population coming from the Empire, deems it imperative to reaffirm its resolution to abide by its domestic legislation in all that appertains to this question or other similar ones; by any other course it would create the possibility of imparting a double character to the judicial effects of the existing institutions, thereby weakening the maxims best known to and most practiced by the family of nations, and impairing the sovereignty of the Republic. And thus, while reiterating, as it does, the categorical views of the memorandum of the 19th of

March, it finds itself in a position where it must declare itself that it can not admit any opinion which does or may involve the slightest disavowal of the right that Venezuela had to enact the several parts of its domestic legislation. Among these are included the decree of February 14, 1873, that of June 9, 1893, and that of the 24th of January last, none of which can be considered in conflict, but rather in conformity with the principles on which rests the public law of nations.

The perfect accord that has always happily existed and must continue to exist between Venezuela and Germany, will manifest itself on this question as efficiently as on all others, by means of a simple reconsideration of the circumstances that distinguish it and of the arguments that put it in its true light.

Accept, excellency, the renewed expressions and assurances of my highest and most distinguished consideration.

EDUARDO BLANCO.

The Most Excellent Mr. SCHMIDT LEDA,
Minister Resident of the Empire of Germany.

[Translation.]

No. 428.] IMPERIAL LEGATION OF GERMANY IN VENEZUELA,
Caracas, July 16, 1901.

MR. MINISTER: In compliance with the desire expressed by the provisional President of the Republic in the conference I had the honor to have with him on the 11th of this month, I take the liberty of repeating to your excellency herein below in writing the proposals I have had the honor to lay orally before your excellency, as well as before the provisional President of the Republic.

I have to restate here to your excellency the motives that have led the Imperial Government to the opinion that the method devised by the Venezuelan Government for the examination and classification of the claims of German subjects who have suffered in their property or interests during the last civil wars is not in accord with the position the German Empire has the right to take for the protection of the interests of those of its subjects who live in foreign countries. These motives were sufficiently discussed in the memorandum of the minister resident of the Empire, Dr. Schmidt Leda, dated the 8th of March of this year.

If at the stage reached by the discussions had on this subject I nevertheless now make an effort to prevail upon the Venezuelan Government to accept the proposals that meet the just desires of the Imperial Government, and are in every way to be considered as an equitable solution of the question, it is chiefly because I did not wish for my part to leave anything untried in order to bring to an end a situation that is awkward for the friendly relations of our two countries.

The proposal which I already had the honor to make orally to your excellency is as follows:

The Venezuelan Government on the one part and the imperial legation on the other would each name an arbitrator, so that both would jointly examine the claims of German subjects growing out of the civil wars.

Whenever the arbitrators should agree, the payment of the indemnity would be effected without any delay whatever, and all cases in which the arbitrators could not come to an agreement would be made the subject of special conferences between the Venezuelan Government and the imperial legation. If these were likewise barren of result then the matter would in advance be deferred to the arbitral tribunal of The Hague for a decision.

While believing that this my proposal meets all the demands of equity, I would nevertheless lay special stress on the point that should the Venezuelan Government have any reason whatever for not being suited with it, I stand ready to accede to any other solution of the question by which the cooperation of the authorities of the Empire in the examination of the claims of German subjects and in the determination of the indemnities appertaining thereto, will be assured. Such a cooperation is the only foundation on which a solution of the question can be established.

While emphasizing, in conclusion, the fact that the Imperial Government attaches the greatest importance to a satisfactory solution of this matter, permit me to express the hope that your excellency's high Government will not allow my effort to reach an agreement on this point to go in vain.

I avail myself of this opportunity to renew to your excellency the assurance of my most distinguished consideration.

VON PILGRIM BALTAZZI.

The Most Excellent Dr. EDUARDO BLANCO,
Minister Resident of Foreign Relations of the United States of Venezuela.

judicial way opened, with its well-known rules, to all those who may propose or believe themselves entitled to the redress of some right.

By reason of these practices and principles and of the situation necessarily created by them, it is unable to concur in the views of the respectable imperial legation concerning the alleged inefficiency of the law of 1873, for the purpose of passing upon applications of this character, nor is it practicable to assent, in regard to the German claims growing out of the last war, to the proposition of restricting the action of the board of classification that is to take cognizance of them; and as for the claims anterior to the 23d of May the same law of 1873 points out the way.

CARACAS, *March 19, 1901.*

[Translation.]

No. 190.] IMPERIAL LEGATION OF GERMANY IN VENEZUELA,
Caracas, March 24, 1901.

MR. MINISTER: I have seen with regret, from the esteemed confidential memorandum of the 19th of this month, that the Venezuelan Government is not disposed to enter into an agreement for the settlement of German claims growing out of the last civil war in the manner that I had suggested, in accord with my Government, in my memorandum of the 8th of this month. Under the circumstances I have been instructed by my Government to declare that, as regards the interests of its protégés it finds itself constrained to refuse its assent to the decree of the 24th of January of this year, relative to the organization of a commission for the examination and determination of the claims. This dissent also applies to the Executive decrees of February 14, 1873, and June 9, 1893, whose dispositions can not be considered as binding by Government in the settlement of the German claims.

While having the honor to bring the foregoing to the knowledge of your excellency, in obedience to the Imperial Government's instructions, I avail myself of the opportunity to renew to your excellency the assurance of my most distinguished consideration.

SCHMIDT LEDA.

The Most Excellent Minister of Foreign Relations to the United States of Venezuela, DOCTOR BLANCO.

No. 404.] MINISTRY OF FOREIGN RELATIONS,
BUREAU OF FOREIGN PUBLIC LAW,
Caracas, March 30, 1901.

MR. MINISTER: In replying to your note No. 190, of the 24th instant, I can not conceal from your excellency the surprise experienced by the Chief of the Executive and the whole Government on finding that it made no mention of the principles of international law which warrant and vindicate the dispositions taken by the Venezuelan Government in the matter of claims for acts imputed to officers who act or have acted in their public capacity. The honorable German legation, ignoring all the views, precedents, and arguments set forth in the memorandum of the 19th, and which affirm the principle of strict sovereignty on which Venezuela based her promulgation of the existing regulations on the subject, comes out, in its reply of the 24th, with a denial, in the name of its Government, of the validity of the long-standing laws of the Republic, without any other ground in justification thereof than that which might be taken in an effort to create a discrimination, objectionable because prejudicial, unjust, and antijudicial, between the foreigners who come to a country and the natives of that country.

It can not escape the enlightened judgment of your excellency, or the learned discernment of the Imperial Government that it is impossible to admit, in the order of relations that regulate and maintain the moral intercourse of nations, practices or principles apt to redound to the detriment of the domestic sovereignty of one of them. Hence does the Government of the Republic, while it fully appreciates its harmonious relations with Germany, and values as a most beneficial factor the gradual increase in this territory of the population coming from the Empire, deems it imperative to reaffirm its resolution to abide by its domestic legislation in all that appertains to this question or other similar ones; by any other course it would create the possibility of imparting a double character to the judicial effects of the existing institutions, thereby weakening the maxims best known to and most practiced by the family of nations, and impairing the sovereignty of the Republic. And thus, while reiterating, as it does, the categorical views of the memorandum of the 19th of

March, it finds itself in a position where it must declare itself that it can not admit any opinion which does or may involve the slightest disavowal of the right that Venezuela had to enact the several parts of its domestic legislation. Among these are included the decree of February 14, 1873, that of June 9, 1893, and that of the 24th of January last, none of which can be considered in conflict, but rather in conformity with the principles on which rests the public law of nations.

The perfect accord that has always happily existed and must continue to exist between Venezuela and Germany, will manifest itself on this question as efficiently as on all others, by means of a simple reconsideration of the circumstances that distinguish it and of the arguments that put it in its true light.

Accept, excellency, the renewed expressions and assurances of my highest and most distinguished consideration.

EDUARDO BLANCO.

The Most Excellent Mr. SCHMIDT LEDA,
Minister Resident of the Empire of Germany.

[Translation.]

No. 428.] IMPERIAL LEGATION OF GERMANY IN VENEZUELA,
Caracas, July 16, 1901.

MR. MINISTER: In compliance with the desire expressed by the provisional President of the Republic in the conference I had the honor to have with him on the 11th of this month, I take the liberty of repeating to your excellency herein below in writing the proposals I have had the honor to lay orally before your excellency, as well as before the provisional President of the Republic.

I have to restate here to your excellency the motives that have led the Imperial Government to the opinion that the method devised by the Venezuelan Government for the examination and classification of the claims of German subjects who have suffered in their property or interests during the last civil wars is not in accord with the position the German Empire has the right to take for the protection of the interests of those of its subjects who live in foreign countries. These motives were sufficiently discussed in the memorandum of the minister resident of the Empire, Dr. Schmidt Leda, dated the 8th of March of this year.

If at the stage reached by the discussions had on this subject I nevertheless now make an effort to prevail upon the Venezuelan Government to accept the proposals that meet the just desires of the Imperial Government, and are in every way to be considered as an equitable solution of the question, it is chiefly because I did not wish for my part to leave anything untried in order to bring to an end a situation that is awkward for the friendly relations of our two countries.

The proposal which I already had the honor to make orally to your excellency is as follows:

The Venezuelan Government on the one part and the imperial legation on the other would each name an arbitrator, so that both would jointly examine the claims of German subjects growing out of the civil wars.

Whenever the arbitrators should agree, the payment of the indemnity would be effected without any delay whatever, and all cases in which the arbitrators could not come to an agreement would be made the subject of special conferences between the Venezuelan Government and the imperial legation. If these were likewise barren of result then the matter would in advance be deferred to the arbitral tribunal of The Hague for a decision.

While believing that this my proposal meets all the demands of equity, I would nevertheless lay special stress on the point that should the Venezuelan Government have any reason whatever for not being suited with it, I stand ready to accede to any other solution of the question by which the cooperation of the authorities of the Empire in the examination of the claims of German subjects and in the determination of the indemnities appertaining thereto, will be assured. Such a cooperation is the only foundation on which a solution of the question can be established.

While emphasizing, in conclusion, the fact that the Imperial Government attaches the greatest importance to a satisfactory solution of this matter, permit me to express the hope that your excellency's high Government will not allow my effort to reach an agreement on this point to go in vain.

I avail myself of this opportunity to renew to your excellency the assurance of my most distinguished consideration.

VON PILGRIM BALTAZZI.

The Most Excellent Dr. EDUARDO BLANCO,
Minister Resident of Foreign Relations of the United States of Venezuela.

No. 898.] MINISTRY OF FOREIGN RELATIONS,
BUREAU OF FOREIGN PUBLIC LAW,
Caracas, July 23, 1901.

SIR: The Government has given the most careful attention to the contents of your note of the 16th of this month of July, No. 428, from which it could infer or confirm the necessity of submitting to a concrete criterion a question that from its origin, circumstances, and effects requires nothing but an examination in a strictly judicial sense, easy of interpretation and simple in results. This department means to avail itself of such a criterion in its reply to the memorandum that your worthy predecessor handed on the 8th of March last, touching the position of the legation in the matter of the claims of German subjects; and, holding that there is no better method for reaching the concurrence of views which the Venezuelan Government desires, and you yourself urge, it earnestly desires that you resort to it.

You say that notwithstanding the stage reached by the discussion of this matter you nevertheless endeavor to bring the Venezuelan Government to an acceptance of earlier proposals; a proposition to which this ministry can not ascribe the meaning that you seem to want to give it, for there is, properly speaking, no formal controversy thus far, since the correspondence has gone no further than a statement from Dr. Schmidt Leda, and the arguments offered by the Government of the Republic, and as yet unrefuted, even in part, by the honorable imperial legation.

The essential point now dealt with, and for the first time advanced by you, is one of transcendent importance to Venezuela, for it touches upon nothing less than our domestic legislation, with whose spirit the national sovereignty is closely bound. Any action or cooperation foreign to this spirit would tend to impair principles with which you are perfectly acquainted, which this ministry set forth and expounded in its memorandum of the 19th of March, and which are observed by all the nations, without any reservation whatever, because in them international concert finds its greatest guarantee.

If nations should legislate for certain classes and the others were given the right to claim protection other than that which the organized local powers are bound to extend, there would be no means of establishing that uniformity of obligations which is the foundation of civil order, and which is logically the consolidation of the duties of the members of a community. Venezuela depends on a legislation that is ample in the sense of protecting the interests of all, and the provisions that precisely regulate the prosecution of claims against the nation afford abundantly adequate guarantees for the obtainment of just indemnities.

You could find in the texts which this ministry had the honor to invoke on the 19th of March in favor of the efficiency and validity of the domestic legislation for the claims under consideration the evidence of the duty imposed by the international law itself upon the Governments to treat the nationals and aliens, within the civil spheres, on terms of absolute equality. You could also see in the body of the memorandum how all the precedents of a legal order coincide, both in Germany and in the United States, in affirming the action of the courts, not that of the Executive power, in cases analogous to that which is discussed in this correspondence.

You will realize the difficulties that would arise in any trial in open court from the intervention of any power which would be unable to follow the proper procedure for the thorough investigation of the alleged facts. Hence spring the necessary separation of powers and the resulting limitation of duties. It is not a disregard on the part of the General Government of the concerns of the nation, or an evasion of the results of its obligations, but the necessity to safeguard the domestic sovereignty embodied in the national laws. So that, as to the point made by you in your note of the 16th, there is no difference other than that concerning the ways and means which each party advocates to arrive at the identical end of making fair reparation for injuries suffered by the act of lawful authorities in the exercise of their public office. You insist that the cooperation of the authorities of the Empire in the examination of claims must be guaranteed, and Venezuela, on behalf of her sovereignty, and by virtue of her domestic legislation, maintains that such cooperation is wholly inadmissible. The apparent dissent lies, not in the object aimed at, but in the manner of attaining it. The most perfect agreement is therefore at hand if the matter be only subjected to the circumstances that define it under the operation of international law.

Among the cases examined and classified by the board extraordinarily organized on the 24th of January last there are several in which German subjects are concerned, as you may see in No. 8262 of the Gaceta Official. Those that have thought that their interests would be better subserved by keeping away from the legal remedy or recourse need not bring forth any outside action in order to carry their

rights or allege some other circumstances. There remains open to them the easy or expeditious way that may or must make fair reparation for them.

It would be impossible to admit them to any privilege that would impair the rights of the other foreigners and of all the nationals. If the end that is sought is to be in harmony with the rights of all, the way to it must be in equal conformity with the principle of justice. And inasmuch as these were, more or less, the arguments offered you by the President in the conference of the 11th, in repeating them here, I carry out the instructions of the Chief Magistrate that I shall express the hope that, upon reconsidering the case, you will accept the grounds on which the Venezuelan Government declines to assent to the proposed intervention of the legation in the conduct of a matter which, far from exposing the interested parties to danger if they trust the procedure of domestic legislation, will always find therein the assurance of being examined in accordance with the most strict precepts of reason and justice.

The earnest desire of the Government of the Republic to maintain the most satisfactory accord with that of the German Empire on all points that may come up for elucidation between them, moves this Ministry to insist upon the foregoing ideas, not from any purely doctrinal point of view, but for the sake of mutual cordiality, which is so necessary and advantageous when the discussion bears, not on ephemerous matters, but on everlasting interests, as are those which are identified with the stability of the law of the country, for the good of the foreigners themselves who hold their property in the Republic.

I take pleasure in renewing to your excellency the assurances of my most distinguished consideration.

EDUARDO BLANCO.

The Hon. VON PILGRIM BALTAZZI,
Charge d' Affaires of the German Empire.

[Translation.]

No. 927.] IMPERIAL LEGATION OF GERMANY IN VENEZUELA,
Caracas, December 31, 1901.

MR. MINISTER: Several Germans have filed in the imperial legation claims for the damages growing out of the last Venezuelan civil wars. These claims have been carefully and thoroughly examined, first by me, and then by my Government. As a result, the total amount of the claims that have been found valid aggregates 1,718,815.67 bolivars.

The several indemnity claims are set forth in the accompanying statement. The documents and declarations of witnesses, therein mentioned and addressed in justification of these claims, are sent herewith in certified copies. The originals of these documents are in the imperial legation.

By direction of my Government, I beg that your excellency will see to it that the sum of 1,718,815.67 bolivars be paid to me in satisfaction of these claims.

Accept, Mr. Minister, on this occasion, the assurance of my most distinguished consideration.

VON PILGRIM BALTAZZI.

The Most Excellent Minister of Foreign Relations of the United States of Venezuela, General JACINTO R. PACHANO.

No. 23.] MINISTRY OF FOREIGN RELATIONS,
BUREAU OF FOREIGN PUBLIC LAW,
Caracas, January 8, 1902.

SIR: As the matter referred to in your note of the 31st of December, No. 927, has already been the object of special correspondence with your legation and as the arguments advanced by the Government to demonstrate the impossibility of giving diplomatic examination to what appertains to the domestic legation of the Republic have not been considered, and much less refuted by the legation, the actual reason for your request relative to the payment of the sum in which you estimate the amount of the German claims can hardly be discovered. The Executive power does not believe, nor is it even presumable, that one of the most enlightened governments of Europe, as is that of the German Empire, and one of the most respectable missions, as is that which it has accredited to Venezuela, will pass upon the merits of a case before examining all its circumstances jointly with the party whose business it

is to give it a legal course. Since the date of the reply to the memorandum of the Most Excellent Dr. Schmidt Leda and of the note addressed to him on the 30th of March last, you have had a conversation with the President of the Republic in which he advanced new arguments in the same sense, which my predecessor repeated in his reply to your note of the 16th of July. No objection was ever made by the legation to the ideas there expressed; and the very circumstance that it was then stated that several of the German claimants had complied with the provisions of the decree of January 24, 1901, led to believe that the discussion was closed and that the other claimants would vindicate their rights in accordance with the procedure laid down in the legislation bearing on the special subject. At any rate and with a view of satisfying you as to the attention with which the Government has considered the general question of claims, it will suffice that I make a statement relative to this very concrete case of the German interests. Besides, paying to the Company of the Great Railway of Venezuela the sum of 113,527.44 bolivars for transportation furnished during the present administration and admitting, in its favor, the further sum of 887,632.90 bolivars on account of claims presented to preceding Governments, payments on that account in the amount of 290,000 bolivars, have been effected with the firm intention of continuing to extinguish the debt, according to the agreement.

The German firms of Steinworth & Co., Brewer, Moller & Co., and Van Dessel & Co., of San Cristobal, and that of A. Ermen & Co., of Puerto Cabello, which submitted their vouchers in good time, and with which arrangements were effected relative to their respective claims, have received the balance of the same, amounting for the four to 369,959.41 bolivars. The board of examination and classification created by the decree of January 24, awarded various amounts in favor of the German subjects Beckman & Co., Becker, Brun & Co., A. Ermen & Co., M. Freym, R. and O. Kolster, Lesuer Romer & Baasch, and Marcus & Co.

It is seen from the foregoing statement that, in spite of the trying circumstances that the Venezuelan treasury has undergone, General Crespo's Government has paid large sums of money on account of allowed claims of German subjects. If a few saw fit not to avail themselves of the provisions of the decree of January 24, 1901, it was probably owing to some defect in the evidence or to a purpose, wholly inacceptable, of seeking payment through a channel other than that of the constitutional law of the Republic, which would result in obvious injustice to the subjects of His Majesty themselves, since the change of procedure would suppose certain prerogatives in favor of those who have not observed the directions of the law as against those who have abided by its provisions.

In that decree justice and foresight were carried to the point of leaving the field open to those who might not adhere to the decisions that would befall their claims, for seeking the enforcement of their rights through the action natural in every case that can be prosecuted in accordance with the law. The supreme court of the country is precisely that which is entrusted with such action and thus its decisions afford, in advance and in a singular manner, the guarantee of the law and the security of justice. It would be impossible to take any other course without throwing in the utmost confusion one of the most important branches of the public administration. It would be enough to establish in that respect the slightest precedent contrary to the law of the country, to turn all the respectable legations accredited to the Republic into mere bodies of ascertainment to the detriment of their own high functions and to bring down the Federal Executive to the station of a mere payer of claims, adjusted by a power other than his, without further examination or proceedings. You are aware that, in the matter of claims, justice requires that all the circumstances connected with each case shall be investigated, that certain particulars shall be looked into comparatively, that the evidence shall be scrutinized, and that the other formalities shall be observed which, in default of the courts, can only be performed by special bodies, like that created by the decree of January 24, 1901.

As the Government can not find within the sphere of its powers the means of solving the question preferred by you in your note of the 31st of December, and as it believes at the same time that there may be valid claims that were not presented in good time for justifiable reasons, it has decided to lay the matter before the Congress at its next session. In the meanwhile and in view of the fact that the papers and other accompaniments sent by you are not originals but mere copies, they will be kept here as part of the note I have had the honor to answer.

Be pleased to accept, sir, the renewed assurances of my distinguished consideration.

J. R. PACHANO.

Hon. VON PILGRIM BALTAZZI,
Charge d'Affaires of the German Empire.

[Translation.]

No. 80.] IMPERIAL LEGATION OF GERMANY IN VENEZUELA.
Caracas, February 13, 1902.

MR. MINISTER: In reply to your excellency's note of the 8th of last month, which I have communicated to my Government, I have the honor to say, by its direction, as follows: My Government takes the standpoint that the provisions of the national law of Venezuela can not restrain it from presenting the valid claims of its subjects against the Venezuelan Government; it considers as valid the German claims presented in my note of December 31, and upholds them in all their import. As to the manner in which the Venezuelan Government will place itself in a position to meet its obligations, it is left for it to decide. With regard to the evident straightened circumstances of Venezuela, my Government is willing to have proper patience, for a short while. It expects, however, an early and full settlement of its claims, and reserves, therefore, to itself to soon take up the subject anew.

Accept, Mr. Minister, on this occasion, the assurance of my most distinguished consideration.

VON PILGRIM BALTAZZI.

No. 232.] MINISTRY OF FOREIGN RELATIONS,
BUREAU OF FOREIGN PUBLIC LAW,
Caracas, February 18, 1902.

SIR: Inasmuch as you say in your note of the 13th instant, No. 80, that your Government holds that the provisions of the national law of Venezuela can not restrain it from presenting the valid claims of its subjects against the Government of the Republic, it is to be presumed that the legation did not communicate to its immediate superior the reasons taken from international law, together with those taken from the law of the country, which this ministry submitted, in the name of the Executive power, to show the impossibility of withdrawing, even for a moment, the general class of claims from the action prescribed by the laws of Venezuela. There is reason to believe that if the arguments offered to you and your worthy predecessors had been considered by the Government of Berlin, it would not have taken so absolute a position, or at least would have prepared itself to refute the doctrine maintained by Venezuela.

In the intercourse of nations, especially when the relations are so cordial and of so long standing as those cultivated by the Republic and the Empire, it does not seem possible that each party can enforce its own ideas in regard to matters coming under the jurisdiction of the others. This would be tantamount to give to the will of the State that would advance such ideas extraterritorial effects, in entire contradiction of the doctrine established and upheld in a categorical manner by public law. And, if it should happen that the nation advancing such pretensions be one of the greatest in population and resources, the intent would prove even more incomprehensible, for it would mean that, in the reciprocal intercourses of nations, contrary to the rule proclaimed by civilization, the superiority of physical power annuls the political equality of States, without which principle all the rulings of international law would be illusory in effect.

Be pleased to accept, sir, the renewed assurance of my most distinguished consideration.

J. R. PACHANO.

Hon. VON PILGRIM BALTAZZI,
Charge d'Affaires of the German Empire.

[Translation.]

No. 261.] IMPERIAL LEGATION OF GERMANY IN VENEZUELA,
Caracas, May 5, 1902.

MR. MINISTERIAL DIRECTOR: By direction of my Government, I have the honor to say to your excellency, in reply to the note of February 18 of this year, which was communicated to it word for word, as were all the previous ones of the Venezuelan Government, as follows:

My Government, with a full knowledge of the arguments advanced by the Venezuelan Government has approved the position stated in my note of the 13th of February, and does not understand how the Venezuelan Government came to suspect that these arguments were kept from it by the imperial legation.

It insists, on the other hand, that the provisions of the national laws of Venezuela can not restrain it from pressing valid claims of its subjects against the Venezuelan Government. If the latter objects that the diplomatic prosecution of such claims constitutes an attack on the domestic legislation of the country and is therefore inadmissible under the principles of international law, my Government for its part, holds that the domestic laws of Venezuela which, in such cases, bar diplomatic representations, are not consonant with the principles of international law since, according to the view maintained by the Venezuelan Government, every form of diplomatic intervention could be barred by means of national legislation. My Government believes that the claims under consideration must be settled through the diplomatic channel, because the procedure adopted by the Venezuelan Government does not disclose adequate guarantee of a satisfactory settlement of those claims. Besides, on previous occasions, as for instance, the settlement of the claims growing out of the Venezuelan civil war of 1892, the German claims were settled by means of diplomatic arrangements between the two Governments.

My Government therefore maintains the demand it has made, and cherishes the hope that the Venezuelan Government will give satisfaction to the claims of the German claimants for their full amount, and in a manner consistent with the friendly relations that have heretofore existed between the two countries.

Accept, Mr. Minister Director, on this occasion, the renewed assurance of my most distinguished consideration.

VON PILGRIM BALTAZZI.

The Most Excellent Ministerial Director at the Ministry of Foreign Relations of the United States of Venezuela, Mr. MANUEL FOMBANA PALACIO.

No. 619.] MINISTRY OF FOREIGN RELATIONS,
BUREAU OF FOREIGN PUBLIC LAW,
Caracas, May 9, 1902.

SIR: I have the honor to refer to your note No. 261, dated the 5th instant.

It deals with the subject of claims, and, as it might be said that on this point the Venezuelan Government has already sufficiently expressed its sentiment and set forth at great length the reason which justify it, the President, to whom I communicated without delay the contents of your note, believes that it will be sufficient to give a brief explanation of the three points or views therein indicated, in order to bring the Government of the Republic and the honorable imperial legation to a perfect accord in regard to the judicial impossibility to admit diplomatic intervention in matters defined, as that is, by the laws of the country. You say that, against the allegation of the Venezuelan Government that such intervention is contrary to the law of the country and therefore inadmissible under the international law, the Imperial Government holds that national laws which exclude diplomatic intervention are not in harmony with international law, because, according to the view of the powers of the Republic, all intervention of this character could be barred by means of municipal legislation. A consideration of this difference suggests the supposition that in the appreciation of the arguments advanced by Venezuela since the memorandum of March 19, 1901, no account has been taken, involuntarily, perhaps, of the correlative train of ideas, for the series of arguments used by the Government in the course of correspondence to demonstrate the validity of the statutes enacted by the Republic in this connection was, from the very first, taken from the international viewpoint even more than from the national. It would be tedious to reproduce here the doctrine of the European and American writers and statesmen who, together with the precedents established by the most sober and civilized nations, Germany among them, were invoked all along in support of the law that governs the general question of claims in Venezuela. It would be equally unnecessary to repeat the maxims and arguments that the ministers of foreign affairs had occasion to adduce in order to confirm the principle of sovereignty, unmovable of itself, with which the Venezuelan State inspired that part of its legislation.

Your language does not purport (at least we must think so) that there are two international laws, one for certain nations and another for the remainder. But even though it were so, to the shame of justice, it would still remain incomprehensible how Germany, after subscribing in her treaty with Colombia (art. 20) to the exclusion of any diplomatic intervention in claims or complaints regularly examined or prosecuted in accordance with the law of the country, should now deny to Venezuela (who has likewise subscribed to it with other European nations and has tacitly made it a part of its constitutional regulations) the right to maintain it in regard to one of

the questions in which the fair and free application of the law is most needed in order to avoid damages and difficulties of mutual consequence, and even to strengthen the reciprocal interests relating thereto.

Another idea indicated in the note is that the procedure established by the Venezuelan Government does not disclose adequate guarantees of a satisfactory settlement. This discloses to a certain extent, besides an imputation, serious in its form and inadmissible, because baseless, a tendency to acknowledge that external action is more efficient than the legitimate vigor of the law. The German Empire is precisely one of the political states that have most justly won general applause and admiration for the spirit of harmony it managed to infuse in its common law in order to maintain in all its provisions that amount of respectibility and importance that is commensurate with its purpose; and it is certain that the Government of His Majesty, charged with the duty of watching over the prestige of that legislation would never allow, without a protest, another power to claim for some foreign influence any superiority or priority over the domestic jurisdiction. Such might be the impression created by your language. For Venezuela to admit that diplomatic action is superior to the operation of her laws would be like a contravention of the privileges of her indispensable sovereignty.

You state, lastly, that on previous occasions, the claims of 1892 for instance, the German cases were settled by means of diplomatic arrangements between the two Governments. In this there must be some misapprehension, for there is no record whatever in the part of the archives of this department relating to the German Empire of any diplomatic convention concluded for that purpose. It appears, on the contrary, that on the 3d of December, 1893, this ministry represented to one of your predecessors the impossibility to intervene, as requested, for the payment of a claim presented by the German firms of Max Reinboth & Co., and Christian Ritter, of Puerto Cabello, on account of losses suffered during the war of 1892. The case was turned over to the board referred to in the decree of June 9 of that same year, 1893, by which the method of classifying such claims was established. With a view of finding what relation your statement possibly had with the facts, I applied for information to the department that had charge at that time of that class of business, and the data supplied by it showed that the cases presented by German subjects were classed by the board and settled with the same kind of bonds as those in which the debt of the revolution was converted. So that the proceedings taken in regard to the classification of those cases were in nowise different from those followed in regard to the claims of the Venezuelans; and if the legation eventually took any part therein it was merely that of receiving, in the currency provided for the payment of all, the amounts allowed and classified, without the slightest derogation to the decrees that regulate the examination and proof of the claims of that period. The action of the board and the validity of the decree of June 9, 1893, were then and there recognized, according to the record on file in the archives of the ministry of finance. The list presented by the imperial legation was nothing more than a copy of the corresponding part of the general books of the board of examination.

The President, who looks upon the German population settled in the Republic as an element of salutary influence, is positive that, if the protection of the Venezuelan legislation is appealed to, their action would not find the action of justice wanting. And as the greater right always carries in law the speedier adjustment, those who will adapt their pretentions to the dictates of equity, have little reason to fear unsatisfactory results. Moreover, there can never arise between governments so friendly united as those of Venezuela and Germany any occasion of quarrel from any decision that may be legitimately taken in conformity to proceeding consistent with the sovereignty of the nation.

Accept, sir, the renewed assurances of my most distinguished consideration.

MANUEL FOMBONA PALACIO.

Hon. VON PILGRIM BALTAZZI,
Chargé d'Affaires of the German Empire.

[Translation sent by the legation of Germany.]

No. 825.] CARACAS, *December 7, 1902.*

MR. MINISTER: In the name of the Government of His Majesty the Emperor of Germany, I have the honor to make to the Government of the United States of Venezuela the following communication:

The Imperial Government, has in good time, taken knowledge of the note of the ministry of foreign relations of the Republic of Venezuela of the 9th of May last.

By that note the Venezuelan Government rejected the demands of the Imperial Government in respect to the payment of the German claims growing out of the civil wars from 1898 to 1900 and, in support of its negative attitude, referred to arguments previously advanced. The Imperial Government, even after considering those arguments anew, does not think it can recognize them as probatory.

The Government of the Republic argues, in the first place, that by reason of the domestic legislation of the country, the settlement by diplomatic action of the claims of foreigners growing out of the wars is not admissible. It thus sets up the theory that diplomatic intervention may be barred by domestic legislation. This theory is not in conformity with international law, since the question of deciding whether such intervention is admissible is to be determined not according to provisions of domestic legislation, but in accordance with the principles of international law.

The Venezuelan Government, aiming to demonstrate that the diplomatic prosecution of claims is inadmissible, further cites article 20 of the treaty of amity, commerce and navigation between the German Empire and the Republic of Colombia of the 23d of July, 1892. But this argument does not seem to have weight, first because the treaty is operative between the Empire and Colombia only, and besides, because section 3 of the said article in no wise opposes the diplomatic prosecution of German claims growing out of acts committed by the Colombian Government or its agents. The statement of the Venezuelan Government that foreign claims growing out of Venezuelan civil wars have never been settled by diplomatic negotions is likewise incorrect. For, besides the respective agreements concluded by Venezuela with France in 1885 and with Spain in 1898, there was signed on the 6th of February, 1896, a formal agreement between the then German minister at Caracas and the Venezuelan minister of finance, both commissioned by their respective governments, for the settlement of the German claims growing out of the civil war of 1892.

No greater weight can be attached to the further objection of the Venezuelan Government—that is, that the diplomatic prosecution of the present claims is inadmissible because the said Government has left a way open for their settlement by the decree of January 24, 1901, for the procedure provided by the decree did not, as the Government has been repeatedly informed, afford a guarantee that those claims will receive a fair solution. In the first place, the claims originating at an earlier period than the 23d of May, 1899—that is, prior to the accession of the present President of the Republic—are not, under the decree, to be taken into consideration, whereas Venezuela will be materially held responsible for the acts of its preceding governments. Next, any diplomatic intervention in the decisions of the Commission is barred, no other resource than an appeal to the high Federal court being admitted, notwithstanding the fact that has been proved in various instances that the judicial officers are depending on the Government and, when the occasion arose, have been dismissed from their offices without any formality whatever. Finally, the payment of such of the claims as might be allowed, as established by the Commission, is to be effected in certificates of a new debt of the revolution to be created for the purpose, which certificates, judging from past experience, would be practically worthless.

As a matter of fact, the procedure followed by the Venezuelan Government has not brought about a satisfactory adjustment of the claims. In particular, the few German claims submitted to the Commission have been in part simply thrown out and partly cut down in an obviously arbitrary manner. There is more—the allowed claims have not been paid—but the aggrieved parties have been compelled to submit to a bill that was to be introduced in Congress.

After failing in various attempts to induce the Government of the Republic to amend the decree in the points herein mentioned, the German Government could do no less than to have the claims of the subjects undergo its own examination and to present at once to the Venezuelan Government those that it had found to be valid.

It is true that since then the Venezuelan Government held out the prospect of obtaining a favorable solution of the matter from its Congress. But the law passed by that body in the beginning of the year goes no farther than to repeat the insufficient provisions of the decree of January 14, 1901, and, in addition, only embraces the claims that could not be submitted to the Commission in good time.

Presently the Government conducted the subsequent correspondence in a quasi-insulting tone, and finally published the notes dealing with the subject, among which were some marked "Confidential," without the consent of the Imperial Government, accompanying the publication with a memorandum couched in offensive language.

Notwithstanding the Imperial Government's desire to maintain with the Republic of Venezuela the friendly relations that have existed heretofore, and while it is far from contemplating any disregard of the sovereignty of the Republic or any meddling in its domestic institutions, it can not but perceive in the course taken by the Vene-

zuelan Government an intent to deny to the German claims the satisfaction to which they are entitled under the international law, and believes it, therefore, its duty to take positive action toward an immediate settlement of those claims.

In consequence, the Imperial Government has instructed me to ask that the Venezuelan Government will see to it, without delay, that the German claims which, according to my note of the 31st of December of last year, amount to 1,718,815.67 bolivars, shall be paid.

Furthermore, the treatment accorded by the Government of the Republic to the German claims growing out of the last wars, has led the Imperial Government to believe that the other claims of its subjects against the Republic require protection in order to arrive at a fair solution. As coming under this head there are to be considered the German claims growing out of the present civil war, the sums due to German firms on account of the construction of the slaughterhouse in Caracas, and the amount due to the Great Railway of Venezuela for interests on and amortization of the certificates of the 5 per cent Venezuelan loan of 1896, which it received by way of guarantee of interests. By order of the Imperial Government I have also to ask that the Venezuelan Government will forthwith make a statement in the sense that it recognizes, in principle, those claims as valid, and that it is disposed to accept the decision of a mixed commission for the purpose of having them determined and guaranteed in every particular.

His Majesty's Government hopes that the Government of the Republic will meet the just demands of Germany, and will not compel the Imperial Government to take the satisfaction of the same in its own hands.

At the same time the Imperial Government deems it its duty not to fail to mention that it has been acquainted by the British Government with the latter's claims against Venezuela, and that the two Governments have agreed to take joint action toward securing satisfaction of all their demands.

I have the honor to append a Spanish translation of the foregoing and avail myself of this opportunity to renew to your excellency the assurance of my most distinguished consideration.

VON PILGRIM BALTAZZI.

The Most Excellent R. LOPEZ BARALT,
Minister of Domestic and Foreign Relations of the United States of Venezuela.

No. 1436 bis.]

MINISTER OF FOREIGN RELATIONS,
BUREAU OF FOREIGN PUBLIC LAW,
Caracas, December 9, 1902.

SIR: On the evening of the 7th instant, a holiday, there came to my private residence the employee of the chancellery of your legation, charged to deliver in my hands an official note of that date, signed by you, marked with the number 825 and accompanied by a Spanish translation. It was through an act of extreme courtesy on my part that I accepted the delivery of that note under such circumstances.

The note refers to previous correspondence of this ministry with the imperial legation touching various claims of German subjects, and winds up with the conclusion that an immediate settlement is necessary and that Venezuela is to be constrained in that sense, in the name or by the order of the Government of Berlin. As the note consists of distinct parts, viz, that which contains the review of precedents and that which sets forth the conclusions, the Government of the Republic, after giving it the mature and earnest consideration demanded by its context, finds it unavoidably necessary to bring out in the forepart the points open to rectification before proceeding with a clear recital of the Federal Executive's purpose and wishes to reconcile the essential object of the note with the circumtsances that jointly bear on the matter under discussion.

It takes up, as being the only argument of Venezuela against diplomatic intervention in matters of a certain nature, that which was concretely stated in the reply of May 9th, in which the whole doctrine set forth in the previous correspondence was passed by, because a repetition of it was deemed unnecessary. And inasmuch as the very highest principles of international law have precisely been taken for a foundation of the defense of the position of Venezuela presented in the memorandum of March 19, 1901, it was found with extreme surprise that you ascribed to the Government a purpose to consider the question in no other light than that of domestic legislation. When article 20 of the treaty between the Empire and Colombia was cited in the note of May 9 last, it was with no other intention than that of adding supplementary proof to that already adduced in regard to the assent given by Germany to the doctrines upheld by Venezuela.

The three cases now cited as precedents for agreements reached through the diplomatic channel are self-explaining. In 1885 an arrangement was made with France for the payment of allowed claims, and the examination of cases dating from much earlier periods. And proof of the fact that the doctrine maintained by Venezuela is therein duly recognized, is found in Article V of that convention, whose force has just been fully confirmed; that article inhibits the diplomatic agents of the two contracting parties from intervening in private claims or complaints relating to matters appertaining to civil or criminal justice, unless there should be some denial of justice. The agreement of 1898 with Spain appears to be the simple effect of circumstances, similar to those which brought about that which is termed by yourself the agreement of February 6, 1896, between the German minister at Caracas and the minister of finance of Venezuela. There was nothing in that instrument that was not contained in a list of claims previously classified within the precincts of the competent board; and the agreement solemnly recognized the validity of the executive decree that had regulated the examinations and the mode of payment of the cases of that period. Under head one, the agreement reads as follows:

"The Government acknowledges, *in accordance with the decrees of June 9, 1893, and July 16, 1894*, the 229,915.37 bolivars, amount of the claim preferred by German subjects as entered in the list submitted by the imperial legation."

The list there mentioned was that which comprised the cases examined and classified by the board, and the claims to which it relates were paid in the very kind of paper created for the settlement of debts incurred on account of the revolution of 1892 which had established itself as a government.

The reference to the strict limitation of the period within which the cases presented to the board had to come totally lacks weight, since the general law which establishes the course for the presentation and vindication of any rights against the nation is still in force. As regards the moral and political status of the judges in charge of such cases, it is impossible to admit, except as a mere supposition, apt to vanish of itself, the charge of lack of competence which, in point of impartiality, seems to be made in the text transmitted by the imperial legation. And if we pass from this to the estimate therein made of the value of the fiduciary paper which is intended to satisfy the debts accruing from the cases submitted to the board, we are left to infer as an inadmissible fact that the German subjects to whom payment was made in 1896 in certificates of the 6 per cent debt, for allowed claims growing out of the war of 1892, were of less exacting temper than the present claimants.

As for the action referred to the Congress, which your note describes as frustraneous, the Government holds that it was rather, as it will shortly prove to be, highly consistent with the principles of equity which prompted its introduction. This is proved by the way in which the resolution of the legislative body succeeded in removing, in favor of various claimants, the legal difficulty that stood in the way of retroactive action.

There is in your statement another point that has drawn the special attention of the Government, because of its affecting nothing less than the seriousness and propriety which it endeavors to impress upon all its acts. It is alleged that the subsequent correspondence was conducted by Venezuela in a quasi-insulting tone, and that the Government finally published the notes exchanged between the ministry and the imperial legation, some of which had been marked as being of a confidential nature. After a thorough examination of the record in the case, it was impossible to find in what passage there is any sentence of insulting significance, since such presumption can not be drawn from the simple statement of a doctrine, or from the mere elucidation of a principle of law. The Venezuelan Government would greatly desire to have such passages as may contain the slightest offense to the Empire pointed out to it, in the same way as it has had, in the course of correspondence, occasion to note several remarks somewhat unfriendly to the Republic, and it would hasten to give them their most polite significance.

The insertion in the publication of August of Dr. Schmidt Leda's memorandum of March 8, 1901, which was marked confidential, constitutes an act that can be abundantly explained. The ministry of foreign relations refrained from publishing that document and its reply even in its annual report to Congress; but when the memorandum of the ambassador in Washington, subsequently known to all the chancellories in the world, took the matter out of its original sphere and made it common property, it was logical that the Republic, mindful of its privileges and responsibilities, should explain to friendly governments the true character of the case, which could not be done without publishing the whole of the correspondence. And it is proper to state that, as you know, a diplomatic note, for being marked confidential, is not supposed to be so held except in relation to the circumstances of temporary duration that require it; else the insertion in publications issued by nearly all the

nations of the world of documents which originally partook of that character could not be understood. After the time during which it was expedient to withhold the note, its confidential character is devoid of purpose. No less was the surprise experienced by the Government at the assertion that the memorandum of the 17th of August last was couched in offensive language. Its mere perusal (such at least is the Venezuelan Government's opinion) shows that the document contains nothing but a brief statement of the views disclosed by the German ambassador in Washington, and a rejoiner made on a strictly legal ground and in the moderate tone that belongs to lawful rights.

Having thus offered the most indispensible remarks relative to that part of your note which sets forth certain antecedents, and hoping that this will serve for the desired rectification of the particulars therein mentioned, I now come to the statement of the views and positions of the Venezuelan Government in regard to your final conclusions and to the animus by which you were guided in presenting them on behalf of your superior.

The Imperial Government desires that that of Venezuela will see to it that the claims of German subjects growing out of the civil war be satisfied, and that, in regard to the other private parties or concerns in which they hold interests, the method of ascertaining and guaranteeing those interests in every detail, be determined by arbitration. The necessity of a statement to that effect is suggested; and as there can be no waivering on the part of the Federal Government touching matters dealing with engagements secured by stipulations placed under the protection of the law of the Republic, or with duties born of concrete provisions of that legislation, neither the first nor the second proposition contains any condition that is not in accordance with what might be provided for the adjustment of every difference with the Government of Germany. If the claims under discussion are just claims, the Federal Executive, as an honored and civilized power, hastens here and now to give the assurance that those claims will be examined and passed upon as such; and inasmuch as the proper board is already organized, there is no occasion for dilatoriness or the slightest departure from the rules laid down by the law in the conduct of the proceedings. In regard to the other particulars, every one of which comes under its regulating law, I need only call attention to the abnormal circumstances created by the war, which are paralyzing any action on the obligations connected therewith. The Government is considering the appointment of a fiscal agent who, by entering into direct communication with the interested parties, will help in making the satisfaction of those obligations easier and less protracted. It is only hoped that the work of pacification in which the Government is now deeply and earnestly engaged will enable it to reestablish the service of public credit.

The claims growing out of the war that is still desolating and devasting a part of the Republic will share fully in all the rights that are established by the law regulating the matter.

Having thus returned, in an essentially conciliatory and friendly manner, a reply to your note, I pass by, under special orders of the Government, that part which relates to the joint action of the Empire and United Kingdom; for a power like Venezuela, which needs not be urged and much less constrained to discharge, as far as it is in its power, its lawful obligations, will never, in its intercourse with the other civilized nations, look for anything that will not be in accordance with the principles of mutual respect and with the rules of reciprocal cordiality.

Accept, sir, the renewed profession of my distinguished consideration.

R. LOPEZ BARALT.

Hon. VON PILGRIM BALTAZZI,
Chargé d'Affaires of the German Empire.

VENEZUELAN YELLOW BOOK, PAGES 47–67.

Part Second.

GREAT BRITAIN.

[Translation.]

BRITISH LEGATION, *Caracas, April 30, 1900.*

MR. MINISTER: Reserving the rights of His Majesty's Government and of His Majesty's subjects residing in Venezuela, as well as all possible future criticism or objections to the decree which appeared in the Official Gazette of the 23d instant,

which decree provides that claims against the Government of Venezuela, referring to the war or other matters, shall not be investigated, considered, nor decided by the magistrates to whom they should be submitted, according to laws now in force, until six months after a decree in which the Chief Executive of the nation shall declare the reestablishment of peace, I take note of the declaration made to me by your excellency in our interview of the 24th of the present month that this decree is not applicable to claims prior to the date on which it was issued. I should also be glad if your excellency would kindly inform me to whom, in the absence of the ordinary protection conceded in friendly countries to foreigners by the courts of justice, which, as your excellency has repeatedly informed me, is the only possible means of redress, to say nothing of that protection which must be conceded to British subjects by treaty, which the Government of Venezuela now apparently repudiates—to whom must they address their application to obtain this protection during the time in which the magistrates are not authorized by law to grant it.

I should also thank your excellency if you would kindly inform me which are those matters, besides the claims relating to the war, which the magistrates are not authorized by law to take into consideration during this period.

I avail myself of this opportunity to renew to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Dr. R. ANDUEZA PALACIO.

No. 604.] DEPARTMENT OF FOREIGN RELATIONS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, May 10, 1900.

SIR: In a communication from your distinguished predecessor, dated the 30th ultimo, received here on the 2d of the present month, and which treats of the decree regarding the filing of claims, it seems to be thought that because in that decree a time is fixed for the receipt, study, and consideration of said claims, the interests, whose validity the judiciary is called upon to decide, remain during all that interval without legal protection. The Chief Executive of the Republic regrets that a measure intended solely to prevent obstacles in the constitutional and harmonious adjustment of all the branches of the service, after the natural disturbances of the war and without injury to any private right, should have given occasion for that supposition. Your excellency knows that the law, as a protecting principle of rights, can never fail to exercise its good efforts, even when it is not possible to apply it simultaneously to all the rights that seek its protection. The fixing of the time in which the necessary proofs of each claim must be received and considered is not equivalent to a suspension of judicial functions until the arrival of said time. The mechanism of the administration continues its daily functions; the decree only treats of delaying, until the complete organization of all the branches of the Government, the consideration of the proceedings relating to alleged damages.

The phrase referring to matters foreign to the war, which your distinguished predecessor also considered as an ambiguous point, is due only to the natural foresight of every legislator concerning matters which it is impossible to decide when the whole administrative branch is included.

As to the assertion that the honorable Mr. Haggard thought he heard from my lips with respect to the claims to which the decree applies, it is not possible for me to own it, inasmuch as the decree of the Executive speaks in a general sense in referring to the circumstances of the war.

I beg to renew to your excellency the assurances of my highest consideration.

R. ANDUEZA PALACIO.

HON. ARTHUR CUNNINGHAM GRANT DUFF,
Chargé d'Affaires.

[Translation.]

BRITISH LEGATION, *Caracas, April 25, 1901.*

MR. MINISTER: I have the honor to inform your excellency that the decree of January 24 of the past year, which creates a "commission for the examination and classification of credits," has received the careful consideration of His Majesty's Government in so far as it affects the claims of British subjects arising out of the last civil disturbances which have taken place in this country.

I now have the honor to inform your excellency that I have received instructions which cause me to entertain the hope that the method of adjusting the pending British claims, proposed in the decree mentioned, may give satisfactory results. At the same time, I have the honor to report to your excellency that the declaration communicated to the Government of Venezuela by Mr. Middleton, His Majesty's resident minister, in his communication of May 21, 1873, to the effect that His Majesty's Government reserves the right to object to any claim on the part of Venezuela at any future time to having released itself, by its own decree, from responsibility to Great Britain as to the injustice or damages caused to British subjects, for which Venezuela would be bound to give indemnization either by reason of the law of nations in general or by virtue of the provisions of treaties.

It is my duty, furthermore, to point out to your excellency that the limit of ninety days within which the claim should be presented, according to article 3 of the decree, is too short a period, considering the great extent of the Republic and the deficient means of communication, and to request, under such circumstances, that an extension of time be granted in those cases in which such a concession is justly requested.

I avail myself of this opportunity to renew to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Dr. EDUARDO BLANCO,
Minister of Foreign Relations.

No. 577.] DEPARTMENT OF FOREIGN RELATIONS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, May 11, 1901.

MR. MINISTER: In your communication of the 25th ultimo, received by me on the afternoon of the 27th, your excellency announces that the decree of January 24, concerning the study and classification of claims arising out of the war which terminated in 1900, has been considered by His Majesty's Government under the impression or with the hope that it would give the claims alleged by British subjects satisfactory results. As the Executive decree in question was issued in strict accordance with the principles of justice, its effects can not fail to conform or be in harmony with the true nature of the rights that may be claimed. Therefore the view of His Majesty's Government in that particular is founded upon logical reasons.

The President, whom I informed of the entire contents of your excellency's communication, regrets not to be able to agree with you as to the opinion that your excellency expresses with respect to the reservations that one of your distinguished predecessors claims to have formulated on May 21, 1873, as to any pretense on the part of the Republic that may release it from all responsibility from injustice done or damages caused to British subjects.

The communication of the honorable Mr. Middleton, to which your excellency refers, did not express the slightest charge of a concrete character against the law of February 14, 1873, the object of which was to establish the manner of making claims against the nation. That distinguished British representative confined himself in the communication to an enunciation of said view in the same words or in the same vague form that your excellency now adopts; and inasmuch as Mr. Jacinto Gutierrez, in his answer of September 6 of that year, stated that a claim expressed in such broad and indefinite terms regarding laws passed by the proper national powers, without violating any public treaty or any principle of international law, was uncalled for and could not, therefore, produce any effect at the time, I have in turn to confirm said opinion or express it anew as a suitable answer to your excellency and in accordance with the instructions of the President of the Republic. On the other hand, the chief justice believes that no reservation of rights whatever concerning decrees issued in the name of the national sovereignty, and the effects of which include both natives and foreigners, is possible or acceptable. There is no principle of the law of nations, nor any assumption whatever in the stipulation which Venezuela should bear in mind concerning Great Britain, which binds the Government to establish discriminations in the protection of the interests which should be governed by internal legislation.

With regard to the period fixed for the filing of the claims arising out of the war of 1899 and 1900, a period which your excellency considered too short, I would respectfully remind you that article 3 of the decree of January 24 foresaw the unavoidable circumstances to which your excellency refers, and therefore acted

before the legal remedy of its effects. Hence the interested party is he who is bound to prove whether he is included in the aforesaid case.

I beg your excellency to accept the renewed assurances of my highest consideration.

EDUARDO BLANCO.

His Excellency WILLIAM HENRY DOVETON HAGGARD,
Resident Minister of His Britannic Majesty.

[Translation.]

BRITISH LEGATION, *Caracas, May 13, 1901.*

MR. MINISTER: I have the honor to acknowledge receipt of the communication of your excellency of the 11th instant, relating to the decree concerning claims arising out of the civil war of 1899 to 1900, in so far as said decree affects the rights of British subjects.

In my communication of the 25th of last month, I stated that His Majesty's Government, in entertaining the hope that the method proposed in the decree in question for settling the pending claims of British subjects might give satisfactory results, reserved to itself the right to "object to any pretense of the Republic of Venezuela at any future time of having released itself by virtue of its own decree of any responsibility to Great Britain with regard to any injustice done or damages caused to British subjects for which Venezuela would be bound to give indemnization either by virtue of the law of nations in general or by virtue of the provisions of treaties."

To this your excellency replies that the aforesaid right to object, which the Marquis of Lansdowne reserves to himself, "is uncalled for and has no relation whatever with the question," because "the temporary President does not consider that any kind of reservation of rights that may affect decrees issued in the name of the national sovereignty, the effects of which are applicable both to natives and foreigners, to be possible or acceptable."

Your excellency also states that "there is no principle of international law nor is there in the stipulations between Great Britain and Venezuela anything whatever that binds the Government to establish any discrimination in the protection of the interests which internal legislation is called upon to exercise." In the first part of this statement the Venezuelan Government would appear to be in direct opposition to that of His Majesty's, in setting forth that the reservation of right which I have had the honor to make in the name of the Government is uncalled for and has no relation whatever to the question, as presumably His Majesty's Government would not have arrived at such a decision had it considered it inopportune. The second part would appear so clearly in contradiction to the terms of the second paragraph of the ninth clause of the treaty of 1825, which says "that British subjects shall be exempt from all forced loans, military levies, or requisitions," thereby holding the Executive Government to that of His Majesty's in this respect, a responsibility which does not exist in the case of other nations.

This constitutes a marked difference, which it would have been deemed impossible to deny and which it is impossible to avoid. His Majesty's Government has never admitted, therefore, the contention of the Venezuelan Government, which is of long standing, that the claims of British subjects should be placed on the same footing as those of natives, submitting them to judicial intervention and decision to the exclusion of diplomatic intervention.

Under such circumstances it would seem that nothing is gained by my continuing the discussion, and without any loss of time I submit the views of your excellency to the consideration of His Majesty's Government.

I avail myself of this opportunity to renew to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Dr. EDUARDO BLANCO,
Minister of Foreign Relations of the United States of Venezuela, etc.

No. 635.] DEPARTMENT OF FOREIGN RELATIONS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, May 25, 1901.

MR. MINISTER: On referring, in your note of the 13th of the present month, to the claims that some British subjects residing in Venezuela may have for damages

arising out of the last war, your excellency disregards that which you had declared in your former communication concerning the vague reservations of rights formulated by one of your predecessors in 1873, and endeavors to establish only a certain counterview in the instructions which you say you have now received, and the answer which Mr. Jacinto Gutierrez, in his capacity as minister of foreign relations, then made to Mr. Middleton, of which your excellency only treats as a new or transitory matter. With all the respect due to the opinion of that honorable legation, and in spite of the interest which the Venezuelan Government has in agreeing with your excellency as to the matter of settling the rights of His Majesty's subjects residing in the Republic, I must advise you of my most decided dissent with respect to the application of such an interpretation of the matter under discussion, since it is not possible to forget what was then declared by Venezuela nor to overlook the time transpired, which amounts already to about three decades, in which the principle of judicial equality, established in the law of 1873 regarding claims against the nation, has acquired—if that were possible—greater strength. I find it necessary to express here a similar or analogous nonconformity in regard to the condition which, with respect to British interests, your excellency seems to deduce from the treaty of 1825–1834. But as said opinion affects a point of easy explanation, a slight examination of its circumstances by way of defining it, and to leave the desired agreement already established, may perhaps be sufficient.

It is a maxim of the law that neither governments nor individuals can grant that which does not belong to them or which for any reason is beyond their natural authority and control. Therefore no government has power to jeopardize the subsequent life of the country in whose name it contracts nor to alienate that which constitutes the essential basis of the political existence of the state that it represents. The rights which form that essential basis are those of autonomy, independence, free development, equal rights, jurisdiction and dominion, and representation, none of which can be renounced without impairing or falsifying the foundation of national existence. From these premises high authorities like Fiore hold (art. 696) as unlawful matter in treaties "that which involves a direct violation of the constitutional law of any of the contracting states;" and hence noted expounders like Hautefeuille (Disc. Prel. XIII) declare that a treaty comprising "the cession or gratuitous abandonment of an essential or natural right can not be considered binding."

The doctrine of authors on this subject corresponds in that respect not only to political conveniences, but also to the law of necessity. In order that an agreement between two nations may afford permanent features it must be in reasonable conformity with the internal condition of each of the states that celebrate it. It could not be conceived, for example, how an essentially industrial or manufacturing nation could treat with another upon the basis of a restriction in the exportation of its products, even though conditions imposed by fortuitous circumstances should intervene. Neither would it be possible to understand how a monarchy could enter into an alliance against the political principle on which it is founded, nor how a republic would subscribe to obligations contrary to its democratic spirit. And since the states are moral entities of continuous life, and to a certain extent perpetual, their duties must always conform to the progressive condition that gives them existence in the concert of nations.

The treaty of 1825–1834, which your excellency cites, is a law, as is every treaty, and could hardly be in open contradiction to the substantive law of the Republic. As far as possible, considering its antiquity, that agreement had to take into account in its clauses the natural change of certain conditions in the civil and administrative life of the two contracting parties, as is proved by the circumstances of mentioning therein (art. 6) export duties, afterwards abolished in Venezuela, and that of the two Governments binding themselves (art. 13) to prohibit their respective subjects from engaging in the slave trade, a trade the existence of which no one at the present day would even think of.

The equality of procedure, so far as interests and other particulars are concerned, is therein not only foreseen, but is also formally established for all time by the two nations, inasmuch as article 9 of said treaty, the same precisely which your excellency quotes, says that in everything relating to the administration of justice, the citizens who are subjects of the two contracting parties shall enjoy in their respective territories and dominions the same privileges, liberties, and rights as the citizens of the most favored nation. Nothing else is aimed at but the administration of justice when a high court takes cognizance of the claims against the nation for alleged injuries which are attributed to the action of the authorities in time of war; and although Venezuela has not up to the present time established with any country

any judicial procedure that presupposes privileges, advantages, or preeminence over the natives of the country, it is inferred from this that the application of the law of 1873 to the claims of British subjects, far from being in contradiction with the provisions of article 9, is in conformity with it in a conclusive and unequivocal manner.

The equality of the procedure in civil cases for natives and foreigners, a principle contained in the law of 1873, and which is included in Venezuelan constitutional law, is based on a maxim universally recognized, namely, the obligation of him who goes to a foreign country to submit to the laws of the same. The ancient aphorism *locus regit actum*—the essential foundation of the administrative unity in every system of government—would be contradictory and inefficient if the existence of two laws were possible, one to protect aliens and the other to govern the interests of natives. This view of necessary equality was that which decided the enactment of the British law of May 12, 1870, by which (art. 2) an alien can acquire or possess property in the United Kingdom, either real or personal, in the same manner and in all respects as British subjects by birth; and that view was the inspirer of the categorical declaration which was signed on April 18, 1890, at the Pan-American Conference in Washington, by fifteen of the seventeen nations officially represented therein. The zeal shown by the American republics in guarding that principle seems to be such that there is scarcely one of them that has not adopted it, either in this or in some other form, in its constitution. The United States of America gave it explicit recognition in 1868 in the fourteenth amendment of its Constitution. The United States of Mexico proclaimed it in article 33 of its Federal constitution. Guatemala, Salvador, Nicaragua, and Honduras made it the object of very explicit articles in their present constitutions. Colombia, on adopting it, included it in its political code of 1886 even more as a right than as a duty, since it at once determined the obligation of natives and foreigners to live subject to the national legislation of the country. The United States of Brazil in the constitution of 1891 assured equally to natives and foreigners the inviolability of civil rights. Ecuador went so far as to subordinate to the acknowledgment of domestic laws the admission of foreigners to the Republic; and Peru made coessential the power of acquiring property in its territory and the fact of being subject to the duties that with regard to said property apply to Peruvians. The Argentine Republic established the absolute equality of rights in its constitution of 1860, and Paraguay did likewise, maintaining in its constitution the same principle that, as is observed, is the only one capable of insuring governmental rule, especially in nations called upon as these are to see their elements of life increased through immigration. And it should be borne in mind that such equality is justly looked upon as a means of attracting foreign subjects to the enjoyment of the national life and as a proof of the complete derogation or forgetfulness of the strange views of other times, which tended to consider every foreigner as an object of concealed suspicion or comparative distrust, and not like the friend that used to arrive, as he now comes to all countries, confident of a cordial reception, as well as respect and affection.

Furthermore, the object of the law of 1873 was to prevent the difficulties of various kinds, occasioned by the manner in which private persons filed their claims, oftentimes without a solid foundation, or complaints without adequate cause. The court designated to define the rights upon which the respective claims are based is the highest in the Republic, and the very fact of thus avoiding procedure or the appealing of cases by the interested parties from lower to higher courts shows that the legislator sought therein to facilitate the means of explaining each claim without any prejudice to other national laws.

To question now, after the expiration of almost thirty years, the right with which Venezuela enacted that law would be equivalent to doubt the efficiency and validity of all the principles on which the sovereignty of nations rests. In the exercise of its powers and by virtue of its privileges as a free and independent State, it legislated at that time without it being possible for it to establish the least difference, whether the claimants were natives or foreigners, regarding the manner of administering the laws relating to the matter. The general laws of the Republic can be but the same for all. Public law so establishes; the national constitution so determines; the civil code so provides in one of its first articles, and so must it always be considered without going so far as to oppose the clause of the treaty that your excellency quotes, inasmuch as it does not contradict it, nor could it ever be in opposition to the administrative standard which independent states always consult in all their agreements. The conditions or duties established by a public treaty like that of 1825–1834 constitute a part of the national law itself, and it is for the magistrates, to whom the occasion is presented of administering justice in the name of the Republic, in that respect to take cognizance of them in order to give them the proper application in conformity with the true judicial sense.

I present here these suggestions, impelled by a friendly and cordial desire of impressing on your excellency's mind the sincere statement of the reasons that the

Government has for not accepting any reservation of right whatever of those indicated by that honorable legation by virtue of the claims of British subjects for alleged damages during the period of the war.

It is not the purpose of the department, as it is not that of your excellency, to continue the discussion concerning that point, which Venezuela finds, moreover, very clear, from the point of view of reason and right.

I beg your excellency to accept the renewed assurances of my highest and most distinguished consideration.

EDUARDO BLANCO.

His Excellency WILLIAM HENRY DOVETON HAGGARD,
Resident Minister of His Britannic Majesty.

[Translation.]

BRITISH LEGATION, *Caracas, June 8, 1901.*

MR. MINISTER: I have the honor to acknowledge receipt of your excellency's communication of the 25th ultimo, relating to the treatment by the Venezuelan Government of foreign claims.

I avail myself of this opportunity to renew to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Dr. EDUARDO BLANCO,
Minister of Foreign Relations of the United States of Venezuela.

[Translation.]

BRITISH LEGATION, *Caracas, December 25, 1901.*

MR. MINISTER: His Majesty's Government has learned with regret, from the communications of Doctor Blanco of the 11th and 25th of May, that the Government of Venezuela refuses to recognize the reservations of rights made by His Majesty's Government in the question of British claims in the last and previous communications, concerning the right to object to any claim on the part of the Venezuelan Government at any time, of releasing itself, by its own decree, of responsibility with Great Britain with respect to damages or injuries caused to British subjects by which Venezuela would be bound to make indemnization, either in accordance with international law in general or in conformity with treaty obligations. These reservations include also the refusal of His Majesty's Government to recognize any limitation whatever by the national law of its right in accordance with the general principles of international law.

His Majesty's Government has refused more than once to admit that even a clause contained in a contract that excludes recourse to diplomatic intervention has any force whatever as an exception to the action of His Majesty's Government, should the latter deem it convenient to exercise such right.

This attitude has been adopted by His Majesty's Government not with special reference to the questions that are now being discussed with Venezuela, but as general principles and after mature consideration. This has been maintained on several occasions, and to this end communications have been addressed to a number of the South American republics.

The answers of Doctor Blanco to my representations have received due attention; but His Majesty's Government has not been able to find in the arguments advanced anything that may induce it to modify the opinion that it has already expressed, and it is my duty to advise the Venezuelan Government that His Majesty must maintain his reservations.

I avail myself of this opportunity to renew to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His excellency Gen. J. R. PACHANO, etc.

No. 14.] DEPARTMENT OF FOREIGN RELATIONS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, January 4, 1902.

MR. MINISTER: In your communication of December 25 last, on referring to the motives of essential legal nature set forth by Venezuela to oppose the reservations of right of Great Britain, which your excellency quoted on April 25 last, relative to the legislation of the Republic in matters of claims, your excellency states, as the principal or only reason for same, that His Majesty's Government has refused more than once even to recognize the validity of the clauses of a contract contrary to diplomatic intervention, should said Government deem it convenient to take any action in that direction, and adds that, in the same sense, communications have been directed to several of the South American republics.

Such a declaration, which is sufficient by itself to define the view in which Great Britain holds the acts emanating from its own will or from its national convenience, tends, in a certain manner, to strengthen the idea of sovereignty which Venezuela maintained from the beginning for insuring the validity of the law of 1873, unless His Majesty's Government thinks possible to establish a doctrine of international law solely for application to the South American republics, which would naturally give rise to the question, Why not assume the same attitude in your relations with the republics of North America and the countries of the European Continent?

The Republic of Venezuela does not wish its legislation to have any supremacy over that of any other country, but to be governed by its legislation alone and maintain and comply with that which is provided for by the said legislation with respect to all the interests permanently existing in its territory, whether natives or foreigners are concerned. So that, even though your excellency says, in the latter part of your communication, that His Majesty's Government maintains in that respect its prior reservations of rights because of not having found in Doctor Blanco's answers anything that induces it to modify its opinion, this department, in accordance with instructions received from the President of the Republic, has to reiterate, as it does reiterate, its former view in the matter, not without respectfully calling attention to the fact of your not having, up to the present time, replied to a single one of the arguments upon which Venezuela relies for opposing the reservations aforesaid.

I take this opportunity of renewing to your excellency the assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency WILLIAM HENRY DOVETON HAGGARD,
Resident Minister of His Britannic Majesty.

[Translation.]

BRITISH LEGATION, *Caracas, January 12, 1902.*

MR. MINISTER: I have the honor to acknowledge receipt of your excellency's communication of the 4th instant, concerning the reservations made by the Government of His Britannic Majesty denying to recognize the claim advanced by Venezuela of being able, by its own decree, to release itself of liability to Great Britain as to damages or injuries to British subjects, for which Venezuela would be bound to make indemnization, either in accordance with the principles of the law of nations or by virtue of formal agreements, and refusing to acknowledge any limitation by the national law of Venezuela of the rights of Great Britain according to the general principles of international law.

I shall not fail to communicate to His Majesty's Government this answer concerning said reservations.

Inasmuch as the reservations of His Majesty's Government are now duly and formally recorded, no good result would seem to be attained by any answer from this legation to your excellency's communication. I shall confine myself, therefore, to the final statement contained in your communication that not one of the arguments upon which Venezuela bases its claim of procedure with Great Britain in a manner contrary to treaty and to the law of nations has been answered.

I am inclined to think that, on second thought, your excellency will agree with His Majesty's legation that allegations or arguments in support of a claim so unusual need no reply.

I take this opportunity to renew to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO, etc.

No. 113.] DEPARTMENT OF FOREIGN RELATIONS,
OFFICE OF PUBLIC FOREIGN LAW,
Caracas, January 25, 1902.

MR. MINISTER: In your communication of the 12th instant, your excellency referred to mine of the 4th and to previous communications from this department relating to the general subject of claims, in such a manner that one might be led to believe in the existence of some Venezuelan law opposed to public treaties and to international law. All of the correspondence maintained on account of the reservations that that legation transmitted tends exactly, on the part of this department, to prove or to demonstrate in that sense the conformity of previous legislation—token of national sovereignty—with the most substantial principles of the law of nations and with the respective stipulations of the treaty of 1825–1834; and hence I fail to conceive how you should have thought, unless through an involuntary error of interpretation, that on my referring to arguments unrefuted up to the present time I could allude to circumstances contrary to any public treaty or to claims opposed to the dictum of international law.

If your excellency would be kind enough to read anew the communications of my predecessor, and especially the one of May 25 last, you would undoubtedly find that the arguments therein contained are not of an inadmissible character, but precedents taken from the clearest doctrine of the law of nations and true and concrete conclusions arising out of the text itself of the treaty with Great Britain. What my predecessor then did was to establish the relation, logical and true, between the law of 1873 and the treaty of 1825–1834, in order to enter into other pertinent considerations not inspired by any whimsical or uncertain opinion, but of that which warrants, defines, explains, and interprets the principles of law followed by all civilized nations.

It is not to be assumed that your excellency—in whom the greatest zeal is always observed as to matters placed in your charge—on saying, with respect to the allegations and arguments quoted, that they "need no answer on account of being advanced in support of unusual claims," should have wished to simply put aside all attempt at refutation, since in fact if you should think those arguments wholly inconsistent with public law, their complete refutation would be much easier for you. And inasmuch as in the communication of December 25 last your excellency informed this department that said arguments had received the due attention of His Majesty's Government, it rather seems that at the beginning another character and importance was imputed to them. Whatever is worth attention is worth an answer, if all is not taken for granted, even when we do not assent entirely to what has been taken into consideration. The Government of Venezuela on its part continues to consider good those arguments and as unanswerable those allegations, and trusts that His Majesty's Government, as well as your excellency, may acknowledge that it is not possible to consider in any other manner a point so clear and of such a definite nature.

I beg your excellency to accept the renewed assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency WILLIAM HENRY DOVETON HAGGARD,
Resident Minister of His Britannic Majesty

[Translation.]

BRITISH LEGATION, *Caracas, January 31, 1902.*

MR. MINISTER: I have the honor to acknowledge receipt of your excellency's communication of the 25th instant, relating to the denial of His Majesty's Government to admit the claim advanced by Venezuela of being able to free itself, by its own decree, of liability to Great Britain concerning damages or injuries to British subjects, for which Venezuela would be bound to make indemnization according to international law or by virtue of treaty agreements, as well as to acknowledge any limitation whatever by the national Venezuelan law of the rights of Great Britain in accordance with the general principles of international law. I have read with interest and attention your excellency's communication; but as it does not seem to throw new light upon the question, it is my duty to request you to be good enough to excuse me from entering further into the subject, and to add anything to the remarks contained in my communications of the 4th instant and the 25th ultimo.

I take this opportunity of renewing to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO, etc.

No. 192.] DEPARTMENT OF FOREIGN RELATIONS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, February 6, 1902.

MR. MINISTER: Your excellency, in your courteous communication of January 31, in answer to the communication that I had the honor to address to you on the 25th in consequence of the opinion expressed by you concerning Venezuelan legislation on the general subject of claims, says, in referring to same, that said communication offers no new light in the matter and beg to be excused from entering into a discussion concerning the contents thereof; but since, in said answer I made reference mainly to the presentation of formal arguments, and especially to those advanced by my predecessor in the communication of the 25th of May of the past year, none of which have been refuted, I must consider in all their force and vigor the doctrines of law and the practical examples argued in opposition to the reservations of Great Britain that your excellency undertook to forward on April 25 of the same year, 1901.

I beg your excellency to accept the renewed assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency WILLIAM HENRY DOVETON HAGGARD,
Resident Minister of His Britannic Majesty.

[Translation.]

BRITISH LEGATION, *Caracas, February 8, 1902.*

MR. MINISTER: I have the honor to acknowledge receipt of your excellency's communication of the 6th instant, relating to the denial of His Majesty's Government to admit the claim advanced by Venezuela of being able to free itself, by its own decree, from liability to Great Britain respecting damages or injuries to British subjects that Venezuela would be bound to indemnify, either in accordance with the law of nations or by virtue of formal agreements, as well as to recognize any limitation whatever by the national Venezuelan laws of the rights of Great Britain, in accordance with the general principles of international law.

I avail myself of this opportunity of renewing to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO, etc.

No. 213.] DEPARTMENT OF FOREIGN RELATIONS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, February 14, 1902.

MR. MINISTER: I have the honor to inform your excellency of the receipt in this office of your communication of the 8th, in which your excellency confines himself to a restatement concerning the subject of general claims, which is but a paragraph of previous communications already answered by this department.

I beg to renew to your excellency the assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency WILLIAM HENRY DOVETON HAGGARD,
Resident Minister of His Britannic Majesty.

[Translation.]

BRITISH LEGATION, *Caracas, February 20, 1902.*

MR. MINISTER: I have the honor to transmit to your excellency with this communication, by instructions of His Majesty's Government, some claims of British subjects against the Government of Venezuela for damages and losses suffered by them at the hands of the authorities and of Venezuelan soldiers.

At the same time I am directed to demand for British claims the same treatment accorded to those of German subjects.

At the bottom you will find a list of the names of the claimants and the amount of each claim, and I have also the honor to include a separate list which accompanies he claims.

I avail myself of this opportunity to renew to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency J. R. PACHANO, etc.

Claimant.	Residence.	Amount of claims.
		Bolivars.
Augusto B. Heude	Guiria	10,000
Jose Natalio John	Naiguata	8,560
John Philip Dil Mahomed	Guiria	8,582
James E. Crossman	Pueblo Nuevo, Aroa	2,500
Rosa Daly	Guiria	1,651
Charles William	do	6,608
Abdool Currim	do	8,500

[Translation.]

BRITISH LEGATION, *Caracas, November 11, 1902.*

Mr. MINISTER: I am directed by His Majesty's Government to inform the Republic of Venezuela that he regrets the unsatisfactory character of the answer to his representations contained in my communications to your excellency of the 30th of July last.[a] He can not admit that the serious causes of complaint advanced should be answered with a denial to discuss the same.

If such a denial is insisted upon, it will be the duty of His Majesty's Government to consider what measures it must adopt for the protection of British interests.

Nevertheless, he does not wish to exclude at once all possibility of continuing negotiations, and is therefore disposed to consider any subsequent communication that the Government of the Republic of Venezuela may be disposed to present.

I avail myself of this opportunity to renew to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency RAFAEL LOPEZ BARALT,
Minister of Foreign Relations of the United States of Venezuela.

No. 1324.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAWS,
Caracas, November 14, 1902.

SIR: From the note of your excellency of the 11th instant, the Government of the Republic might conclude, not without great sorrow, that the Government of His Britannic Majesty has not yet carefully considered the series of complaints and observations presented to the British legation on account of the acts committed by the *Ban Righ* from the time of her departure from English ports and of the attitude taken by the authorities of Trinidad, from the beginning of the revolution excited within the territory of said colony and which has just devastated Venezuela so seriously. If those charges had been examined, and they were thoroughly summarized up to the 5th of April in note No. 450, and to which, among others, there has just been added that of the dispatch of numerous sacks of mails for Ciudad Bolivar, a place controlled by a sedition against the legal power of the Republic, the Government of His Majesty would not have attributed to the mere will of Venezuela the proposition of the other questions, and would see, on the contrary, the logical result of a condition very foreign, indeed, to all that the Federal Executive could have presumed in the course of its amicable relations with the Kingdom of Great Britain.

When matters are considered seriously and impartially it will be seen, on the one hand, that the effort of the Government of His Majesty, or of the legation in Caracas, to discuss questions relatively of secondary importance, many of which may be considered as having been investigated and decided; and, on the other, the just, natural,

[a] See this communication in the part of the Appendix concerning the complaints filed by Venezuela on account of the revolutionary ship *Ban Righ*. The other communications quoted in the answer are found in the same appendix.

and indispensable interest of Venezuela in seeing her rights cared for and respected, in view of the serious losses caused thereto by a vessel sailing from English waters, provided with British papers, and on account of the evident facilities encountered in the adjacent colony both within and without the vessel for the consummation of her plans inflicted all the losses suffered by the Republic from the month of January to the present time. The situation, therefore, mentioned in the note of your excellency can not be imputed to the Government of Venezuela even by an indirect act of her will.

The effects of that situation corresponds to a condition of things with which the Government of His Majesty itself is intimately connected. The said Government can not comprehensively and much less acceptably consider that another Government, acting under the inspiration of its rights and duty, submits to circumstances which it did not create or to necessities which it has not established. In this particular Venezuela does nothing capable of being considered a violation of any formula of courtesy or any principle of law. Her conduct is in entire harmony with the judicial status of the question, and for her nothing would be more satisfactory, in view of her strong relations of friendship with Great Britain, than to receive from the Government of the Kingdom some demonstration looking to the establishment of a mutual understanding in order to satisfy the losses caused by the steamer *Ban Righ*, and by the consequent conduct of the authorities of Trinidad. Until the present she can see nothing but the most unjust refusal on the part of Great Britain to discuss the subject; a declination aggravated by the fact so recent as that of your excellency not having even replied to the note addressed to you October 27, relative to the illegal dispatch of a heavy mail from Trinidad for places like the Ciudad Bolivar occupied by insurgents.

There has been given much thought here relative to the serious accidents, as the inevitable result of the acts of the *Ban Righ*, since last January, and by the attitude assumed by the authorities of the adjacent colony which caused loss to Venezuela. The Executive asks nothing of Great Britain which does not legitimately arise from the nature of the question; and, therefore, appeals to the spirit of justice and rectitude of the Government of His Majesty in order to place the matter upon the plane of mutual agreement, as the only means of changing the abnormal condition referred to in the note of your excellency and which the Government of the Republic is the first to lament most seriously.

Accept, your excellency, the renewed assurances of my highest and most distinguished consideration.

R. LOPEZ BARALT.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,
Minister Resident of His Britannic Majesty.

[Translation.]

BRITISH LEGATION, *Caracas, November 19, 1902.*

SIR: I have the honor to acknowledge the receipt of your note of the 14th instant relative to the complaints of the Government of His Majesty against Venezuela, and to advise you that without loss of time I transmitted said communication to the Government of His Majesty.

I take this opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Dr. RAFAEL LOPEZ BARALT,
Secretary of Foreign Relations of the United States of Venezuela.

[Translation.]

BRITISH LEGATION, *Caracas, December 7, 1902.*

SIR: In reply to the note of your excellency of the 14th instant, I have the honor to inform you that I have received instructions from the Government of His Majesty to point out to the Venezuelan Government in writing that with respect to the steamer *Ban Righ*, the Government of His Majesty has given full explanations and has shown that in this regard there is no legitimate ground for complaint, nor does the Government of His Majesty consider that there is any justification in attributing blame to the authorities of Trinidad, who only acted according to instructions.

I have the honor to state also that the Government of His Majesty also laments the condition that has arisen, but that it can not accept the note of your excellency as a sufficient reply to my communications nor as indicative of the intention on the part of the Government of Venezuela to satisfy the claims that the Government of His Majesty has advanced, and that it should be understood that they include all the well-founded claims that have arisen as a consequence of the last civil war and of the prior civil wars and from the mistreatment or unjust imprisonment of British subjects, and also an arrangement of the foreign debt.

It involves upon me to request the Venezuelan Government to make a declaration that it recognizes in principle the justice of these claims; that it will immediately pay compensation in the marine cases and in the cases above mentioned and in those in which British subjects have been unjustly imprisoned or mistreated, and that with respect to the other claims it will consent to accept the decisions of a mixed commission with respect to the amount and the guaranty which must be given for their payment.

It is my duty also to express the hope that the Venezuelan Government will reply to these demands and not oblige the Government of His Majesty to take measures in order to obtain satisfaction.

I should add that the Government of His Majesty has been informed of the claims of the Government of Germany against Venezuela; that the two Governments have agreed to work together for the purpose of securing the settlement of all their claims, and that the Government of His Majesty will demand the immediate payment of a sum equal to that which in the first place may be paid to the German Government. Whatever balance there may be after the payment of the urgent claims shall be held for the liquidation of the claims which shall be passed upon by the commission.

I also have instructions from the Government of His Majesty to state clearly that this communication should be considered in the light of an ultimatum.

I embrace this opportunity in order to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Dr. R. LOPEZ BARALT,
Secretary of Foreign Relations of the United States of Venezuela.

No. 1435 bis.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAWS,
Caracas, December 9, 1902.

SIR: On Sunday, the 7th of the present month, a person whom I have not the honor to know officially called at my private residence in order to deliver to me in the name of your excellency the note bearing that same date relative to claims of British subjects which have been advanced on account of the last and former civil wars.

A sentiment of extreme courtesy on my part induced me to receive the note under those circumstances on that day.

This department has had a voluminous correspondence with the legation of His Majesty on account of the complaints which Venezuela had in due time presented to the Government of Great Britain, in view of the losses caused by the *Ban Righ* and by the partial conduct of the authorities of Trinidad relative to the revolution which has just devastated the Republic. Your excellency begins by referring to one of my notes, said to be of the 14th of the present month, and which no doubt is that of the 14th of the month last past. With reference thereto your excellency states that the Government of His Majesty has found no ground for the demands of Venezuela, as the acts of the *Ban Righ* (it is added) were fully explained, and the authorities of Trinidad did not act in other respects except in obedience to instructions. Your excellency then enters immediately upon the subject of British claims, and requests in the name of your Government that the Government of Venezuela declare the justice thereof, after which you speak of the necessity of their payment and of the joint action agreed upon between the United Kingdom and the German Empire in order to compel the Republic to make payment.

The Government has considered that note with the care which its contents demand without having found, in the relation of the antecedents cited, anything which justifies the present attitude or any motive which explains the omission of that reciprocal understanding that would avoid and foresee difficulties. The Government of the Republic begins by calling attention to the fact that the note of December 14, which is the one without doubt to which your excellency refers, had for its essential object to secure an immediate agreement with Great Britain relative to

pending questions; and, therefore, it is with surprise that there is noted the evasion or apparent omission by Great Britain of the cordial and friendly views which were so recently set forth. With reference to the *Ban Righ* no action has been taken tending to remedy the tremendous damages which she caused the Republic; and with respect to the conduct observed by the authorities of Trinidad, far from having offered any reparation it appears now that they obeyed the express instructions of the British Government. This circumstance needs no explanation, for this alone is sufficient to fully justify all the demands that Venezuela has set forth in the correspondence carried on with the legation until the 14th of last November.

Ignoring the above, the essential part of the note of your excellency, or its real object, can not be other, according to the text itself, than the security of the interests of British subjects. There is found full assurance of such security without the Government departing, as it can not depart, from its administrative functions in order to harmonize the actual state of affairs with the desire expressed in the name of Great Britain. There could be no difficulty in the Federal Executive recognizing the justice of obligations that are recognized in the national laws, and in that sense there can be full assurance that the interests in question will always be protected and properly cared for.

As to claims, your excellency refers specifically to those enumerated in the note of February 20, last past, and which, in your judgment, amount to 36,401 bolivars, the claims commission created by a resolution of the national legislative body will examine and pass upon them according to justice. The other subjects of the correspondence not replied to relate to that which may become claims, of facts that are about to be investigated or defined, and to which competent authority is giving or will give attention. And as your excellency speaks of *well-founded claims*, it does not seem possible that such questions in their present condition or legal status can present the same aspect as those described in *expedientes* which set forth their character and form a basis for the order or decree of the proper court or body. The Government can find nothing more in the present request of Great Britain, although it has carefully studied and investigated the same; for the so-called foreign debt, which the note incidentally mentions, ought not to be and never has been a matter of discussion foreign to the national law of the public debt, in which it appears with all its legal guarantees.

The war which for the past year has devastated Venezuela has left the public treasury almost exhausted, and it has been impossible for the administration to attend for the moment to the serious necessities of the national debt.

Until the work of pacification, almost accomplished, is completed the difficulty will continue. When peace is declared, which will be soon, it will be unnecessary to remind the Government of the Republic of its fiscal obligations, as it as well knows it duty in this regard, without the necessity of compulsion or stimulus, as your excellency knows the laws of mutual respect and of sound friendship.

Accept, your excellency, the renewed assurances of my highest and most distinguished consideration.

R. LOPEZ BARALT.

His Excellency WILLIAM HENRY DOVETON HAGGARD,
Minister Resident of His Britannic Majesty.

Note relative to the joint action of Germany and Great Britain and protocols signed in Washington by the representatives of said nations.

No. 1468.] UNITED STATES OF VENEZUELA,
DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAWS,
Caracas, December 17, 1902.

SIR: Ever since the Government of the Republic first explained to the legations of Great Britain and Germany its explicit opinion as to how titles or the rights of their subjects should be discussed in matters affecting national liability, it was very careful to conform its opinion to the clearest principle of domestic sovereignty as well as to the sound precepts of international law. Under the action of this twofold legal power it endeavored to avoid unfortunate differences with those European states; and with the assurance of not having failed in any mutual agreement, but rather omitting to cover up any violation of the interests of the natives of the United Kingdom or of the Empire, it demonstrated in its correspondence with the respective

legations the material impossibility, by law, of establishing for English and German subjects, as compared with the natives of the country, any difference as regards civil actions, as is evident would be the case to allow in some instances their persons and property to be exempt from the effects of domestic law in order that they might place themselves under the protection of a power foreign to the territory where said subjects exercise with advantage their ability and faculties.

On that line there was presented to the Imperial legation proofs and arguments taken from German legislation, and to the British legation there was set forth the exact equality which exists between the stipulations of her treaty with Venezuela (1825–1834) and that absolutely required by Venezuelan legislation in order to define any alleged right and to secure the same. In order to consider as just the pretensions of those two Governments with regard to their subjects, they could not fail to see the adequate guaranty of their interests, and it may be that this gave rise to the desire, and more than the desire, the extreme effort to make Venezuela accept as the only estimate the official value of other nations with respect to the nature, the origin, the legitimacy, and amount of the claims arising from acts performed or deeds executed within the territory of the Republic.

Justice, so far as relates to its essential character, is never diversified in its manifestations and effects, whatever be the ground on which it may be shown or the country in which it is analyzed. Its power is always in direct line with the circumstances which engender it or in the quality of the titles to which it is applied; therefore the determination of those two Governments to throw aside Venezuela's opinion as to her domestic authority and the international law which supports that same sovereignty is incomprehensible. No less surprising was the disinclination on their part to examine the question on a truly judicial basis, as Venezuela had done from the beginning. When affairs were in this condition, both nations unexpectedly resolved to appeal to the extreme recourse of force in order that the Republic consent to what she could not in any degree consider in harmony with the prescriptions of justice. The pressure came and was brought to bear when the country is still involved in the disasters of a civil war and the Government dedicated to the task of pacification, through which alone can the Republic recover from her terrible distress. This coercive action comes when the country is feeling the sad results of certain deeds with which, unfortunately, are associated a number of circumstances from which arose, with justice, the series of claims and complaints presented by Venezuela to the Government of Great Britain since last January. And, furthermore, this armed action comes soon after Venezuela had solemnly protested to the Imperial Government against the action of a vessel of the German navy in the waters of the Republic during the months of October and November, both against the rights of the people and international agreement. The Republic has all the force of justice on her side; she feels that she is in the full possession thereof; but the Government is convinced of the futility of her efforts to refer the solution of the difficulty to the calm path of justice, and is obliged to accept the only remedy at hand in order to avoid new disasters to the nation. But if the circumstances of the moment, to whose weight alone she bows, force her to such a sacrifice, she does not admit that the imposition thereof is equivalent to a diminution of the judicial rights of the Republic, victoriously sustained throughout the correspondence relative to the German and British claims. One thing is admitted under the pressure of force, at a certain time, under an exceptional title, and under a solemn protest, and another is that which unites to itself the immutable and permanent life of national interests.

The Government of the Republic, without separating itself in the least from the doctrine of the rights of the people and from constitutional rights, with which its correspondence with the legations was inspired, and constrained only by the pressure of present circumstances, superior to all force, and which could not have been foreseen, sufficiently authorizes your excellency to accept in its name and representation all necessary authority to peacefully settle the question, and admits, as an exceptional case, without it constituting in any manner a precedent, the recourse of a mixed commission for the examination and determination of that which may be decided upon. Both the formation of said commission and the method of payment shall be the subject of a future agreement, which will be celebrated by your excellency, whom the Government of the Republic had designated as its arbiter for the solution of the grave question even before the allied forces of England and Germany had committed the first aggressive act. That appointment by Venezuela, which was anticipated as much as possible, is an eloquent testimony of the conciliatory spirit which is found animating the Federal Government, and was prompted by the same motive which now fully empowers your excellency to abandon at once the question on the road to settlement in the best manner that circumstances will permit for the national interests.

Upon communicating to your excellency the final reply of the Government of Venezuela, as a result of the extreme coercion exercised against the Republic by two nations of great material power, I repeat the expressions of gratitude which are your due for the cordial and friendly manner shown by your excellency in your interposition in so grave a difficulty.

Accept, your excellency, the renewed assurance of my highest and most distinguished consideration.

R. LOPEZ BARALT.

His Excellency Mr. HERBERT W. BOWEN,
Envoy Extraordinary and Minister Plenipotentiary of the United States and charged with representing British and German Interests.

VENEZUELAN YELLOW BOOK, PAGES 85–96.

Part Third.

ITALY.

[Translation.]

No. 372.] LEGATION OF HIS MAJESTY THE KING OF ITALY,
Caracas, August 27, 1900.

SIR: Referring to the formal exceptions which I had the honor to present verbally to the lamented predecessor of your excellency relative to the decree issued by the national Executive April 23, 1900, with regard to the claims arising from the latter part of the war, I am now authorized to state to the Government of the Republic that the Government of the King of Italy can not attribute to the said decree of April 23, 1900, any value whatever, so far as the Government of Italy is concerned, or admit that it in any way can affect the action which, at the proper time, the Government of the King may exercise in the interests of Italian subjects prejudiced during the war of 1898 to 1900.

I have the honor to reaffirm to your excellency the assurances of my highest and most distinguished consideration.

G. P. RIVA.

His Excellency Dr. EDUARDO BLANCO,
Secretary of Foreign Relations.

No. 1138.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAWS,
Caracas, August 30, 1900.

SIR: Your excellency refers in your note of the 27th (No. 372) to the exceptions which were verbally made to my predecessor relative to the executive decree of the 23d of last April, and of your being instructed by the Government of the King of Italy to state that no value can be attributed thereto so far as concerns said Government, or to permit that it can affect any action which at a proper time may be taken in the interest of Italian subjects which may have been prejudiced by the war of which Venezuela was the theater during recent years.

The spirit and form of that note has excited the serious attention of the Government, and in the name of the supreme head of the Republic I shall set forth, with the greatest respect to your excellency, the reasons why its contents have excited surprise.

It is an axiom of public law that all states should be considered equal in everything affecting their judicial capacity, the exercise of their powers, and the fulfillment of their obligations. The eminent Italian, Pascual Fiore, one of the publicists who most categorically announces this principle of political equality, without which the equilibrium of international society would be impossible, and who, before setting this forth in article 143 of his codified law, states in article 113 that to each state is given the exclusive power to judge of the equity of its own laws and of their timeliness and efficiency relative to the protection of rights in all its manifestations. It may be said that in the correlation of such maxims is united territorial sovereignty, for the exercise thereof would clearly suffer limitations should it in any way be subordinated to the influence of foreign interests or be influenced by the force of desires foreign to itself.

The executive decree cited by your excellency did not refer to any certain cases, nor did it have in view any titles that might directly interest any particular nation. It was a provision of a general nature, issued in view of a domestic necessity. Articles 9 and 10 of the constitution of the Republic, furthermore, do not allow the least difference between natives and foreigners in measures of this sort; neither does international law allow the establishment of circumstances that would place persons who are natives of another country in a judicial position superior to the natives of the respective state.

"Every person who voluntarily goes to a foreign country," states Fiore, "is obliged to submit himself during his residence therein to the laws of safety and the police laws. He can not object because the application of said laws are more or less just or burdensome measured by the laws of his own country or those of other states, but is obliged to observe the same form of procedure and has the same rights and guaranties that exist for the citizens of the state." (D. I. C., art. 173; International Law Codified, art. 173.)

The analogy of the foregoing principle with the cases in which public necessity demands measures like those of April 23 is the best pledge of the right under which it was issued and the best title to its general acceptance.

Suppose, your excellency, that the legislator found it necessary, for every act related to public interests, to consult the opinion of corresponding legislation in countries from which foreigners resident in the territory have proceeded; and that such necessity referred to measures not opposed to international law, or, in other words, were in entire harmony with the principles of safety or domestic order which the nations have accepted and which the times sanction and approve. Imagine such a condition, your excellency, and I have confidence in your learned judgment as to the results. As there would be no way to establish the necessary harmony between the respective act and domestic legislation if it were obliged to obey for any reason the diverse opinions which form the constitutional order of other states, there would necessarily follow a series of contradictions in theory and of difficulties in practice which would render impossible or nullify every act of the administration. It was such a line of arguments that writers followed when they declared that "it is impossible to consider a state as sovereign and independent, unless it has the power to dictate its civil and penal legislation according to its convenience, its necessities, and its interests." (Calvo, D. I. T. P., par. 513).

The equality of rights between natives and foreigners is, as your excellency knows, the pledge of order and a saving principle of justice, for otherwise the incorporation of strange elements into the national life would constitute, especially in countries with a sparse population, a motive for international discord, engendered by that natural sentiment in man which recognizes that the imposition of the same duties must correspond in like circumstances to the rights of all.

When the treaty of June 19, 1861, was celebrated between Venezuela and Italy, which is still in force, those principles and necessities were carefully guarded. In article 4 it was stipulated that "in case of revolution or civil war the citizens or subjects of the contracting parties shall have the right in the territory of the other to be indemnified for the losses and damages caused to their persons or property by the constituted authorities of the country in the same manner and according to the laws which govern or may govern in the event of natives having the right to indemnity." This provision was the complement or result of that contained in the beginning of the same article, according to which the citizens and subjects of the contracting states shall enjoy "the same rights and privileges that are granted to natives, submitting themselves to the conditions imposed upon the latter."

The principle which inspired that part of the Italian-Venezuelan covenant conforms perfectly with that stated by Bluntschli in article 387 of his codified international law. "No state," says he, "is obliged to concede to foreigners personal privileges or rights incompatible with the constitution or fundamental law of the country."

From the foregoing your excellency will no doubt understand the surprise with which the note of the 27th instant has been considered, and the zeal with which it solicits the rectification of the subject treated therein. The upright spirit of the Government of the King and the lofty judgment which distinguishes Your Majesty, encourages the Executive power to here declare with all sincerity that in international affairs it is impossible to accept the sentiments of said note, as it is opposed to the constitution of Venezuela, to the principles of jurisprudence previously invoked, and to the treaty at present in force between the Kingdom and the Republic.

Please accept, Your Excellency, the renewed assurances of my highest and most distinguished consideration.

EDUARDO BLANCO.

His Excellency Mr. JUAN PABLO RIVA,
Minister Resident of His Majesty the King of Italy.

[Translation.]

No. 246.] THE LEGATION OF HIS MAJESTY THE KING OF ITALY,
Caracas, April 24, 1901.

SIR: Referring to the verbal exceptions which I had the honor to make to your excellency with respect to the decree of the executive power of January 24 of the current year relative to the claims against the State arising out of the last revolution, I now comply with the duty of informing your excellency that the Government of His Majesty the King of Italy has charged me to state to the Government of the Republic: That it absolutely can not admit the exclusion of the Italian claims prior to May 23, 1899, and which includes the entire revolutionary period from 1898 up to the date above cited; that it can not accept the exclusive competence of the high Federal court, to which is reserved the final decision of the claims in virtue of the decree of February 14, 1873, made operative again by the decree of January 24, 1901; that it can not accept the payment of claims to be made according to the provisions of article 12 of the decree of June 9, 1893, also revived by the above-mentioned decree of the 29th of last January.

I have also been instructed to add, as I hereby do, the most ample exceptions in favor of the rights of the Italian claimants.

I trust that the Government of the Republic will consider it worth while to take into account the equity and the propriety of the considerations that influence the Government of the King, and will have the goodness to recognize the advantage of making a dispassionate examination of the questions, so that a way may be found of arriving at a solution which, respecting all the prerogatives, may at the same time satisfy all the just exigencies of the occasion and all the varied interests discussed.

I am pleased to assure your excellency that you can count fully on my earnest desire and hearty cooperation in the effort to arrive at an equitable and satisfactory solution, which can not be other than the good desired by the efforts of all.

I have the honor to confirm to your excellency the assurance of my highest consideration.

G. P. RIVA.

His Excellency Dr. EDUARDO BLANCO,
Secretary of Foreign Affairs.

No. 542.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAWS,
Caracas, May 2, 1901.

SIR: Upon your excellency referring on August 27, 1900, in note No. 372, to the decree of April 23 of that year relative to the period in which claims arising from the war should be presented, and which you presented in the name of your Government, exceptions analogous to those which were contained in your communication of the 24th of last month received during the afternoon of the 25th. And as this department in its reply at that time stated the reasons based both on domestic and international law which obliged it to declare said claims inadmissible, and also the entire legality of the power by which the Chief Executive issued the decree, I consider it proper to repeat at this time in all its details the contents of said reply, not, however, without enlarging upon some judicial opinions, in order that the learned judgment of your excellency and the wise opinion of the Government may reconsider the subject in accordance with the circumstances and its real character.

It is noted with surprise that your excellency considers unacceptable the exclusive jurisdiction of the high Federal court as to the claims of Italian subjects, as though the intervention of such an elevated tribunal on such a subject did not depend upon an old law dictated in the exercise of a sovereign power by the authorities of Venezuela and officially communicated upon the date thereof (1873) to all the States of the Republic and to foreign nations. To exempt a foreigner, on account of the fact that he is a foreign citizen, from the effects of a principle sanctioned both by the constitution of the country where he resides, included in the civil code, and specifically assured by a domestic law would be equivalent to the creation of a condition eminently calculated to engender great difficulties for the nation which opens its doors to just desires and honorable aspirations. The establishment of that difference, which in international law has come to be called "an exorbitant and dangerous privilege," might be assumed, as was very judiciously stated by the department of foreign affairs of Peru in the celebrated circular of October 26, 1897, when it said that governments according to this view are nothing more than "simple insurance companies against dangers and losses which are not caused by them and which in the majority of cases they could not prevent."

When natives and foreigners are equal as to the means of obtaining the recovery of a right or the determination of a title, the latter can have no cause to argue any lack of security, as it is not to be presumed that the legislator, by virtue of his office a representative of the national sovereignty, would sanction acts capable of operating in opposition to his own constituents.

The high Federal court, in its capacity as the first tribunal of the nation, becomes the most efficacious guaranty of justice for the case under discussion. Venezuela gave to the highest of its judicial bodies the examination and decision of those questions in order to facilitate the action of the party in interest and relieve him from applying to a number of courts prior to the final investigation of the alleged rights. In making equal the conditions for both foreigners and natives domestic sovereignty took into account the practices and principles of international law and the necessity of attracting elements that it would be profitable to assimilate, without prejudice to any sentiment of justice or any maxim of equity.

If it were within the power of all other states or any of them to ignore the laws and regulations which a country enacts relative to interests located within its territory, the employment of one of the most sacred powers of the people when constituted into an independent nation would be rendered difficult or at least problematical. It would be necessary for each act required or demanded by the public good to consult with foreign states who, by the exercise of such an abnormal prerogative, would be converted *ipso facto* into critics of the state that would thus consent to the limitation of its sovereignty. Therefore, Calvo says (par. 513) that "it is impossible to consider a state as sovereign and independent unless it possesses the power to dictate, according to its convenience, its necessities, and its interests, its civil and penal legislation." Further on (par. 514) he adds that "every state has just and legitimate jurisdiction over the persons and things found within its territory, as well as over the acts performed therein, without reference alone to the native subjects of the state, but also with reference to the foreigners resident therein." This principle of international law, which your excellency will find denied by no writer nor questioned by any organized body, is sufficient to describe the condition of affairs and demonstrate that in the law which gives to the high court general jurisdiction over the claims against the nation, there is nothing to throw aside or of doubtful application.

For the courts of justice to take cognizance of claims arising from damages caused by war is neither new in civil life nor unknown to international law. Without piling up citations upon this point I consider it sufficient to recall, with the eminent Fiore, that "when a conference met in Paris in 1869 for the purpose of passing upon the difficulties between Turkey and Greece, one of the important rules established by the declaration of February 15 was that Ottoman subjects were obliged to apply to Greek courts in order to claim indemnity for the losses caused by the acts of individuals and for those suffered during the war." (New International Public Law, According to the Necessities of Modern Civilization, par. 653.) It should be mentioned that in paragraph 648, when the learned Italian referred to the duty of protecting the citizens themselves, he establishes under a letter *a* the first rule, as follows: "Protection is illegal and unjustifiable when its purpose is to secure for the natives resident in a foreign country a privileged position." This maxim or precept assumes the highest importance, because action contrary thereto would often oblige the state in which the foreigner resides to consider him not as he is in reality and as the industrious Italian ever will be considered in Venezuela, an element of progress or a factor which enjoys the advantages of life on a level with the natives, but as a sort of increasing danger capable of gradually constituting the greatest of dangers to the public administration and to the national sovereignty.

Nor is the formal invocation of the judicial maxims to which Venezuela appeals in claiming it to be inadmissible for diplomacy to consider questions relative to claims of this class a new thing in the diplomatic correspondence of nations. The Italian legation itself, in treating of a similar subject in a note which was addressed to the royal department of foreign affairs in Rome, August 30, 1894, set forth the result of a free investigation, from which was deduced the existence of a certain uniform decision to refuse to insert anything of the kind or anything foreign to the equality of treatment established by each code of domestic law.

Here are the paragraphs to which I refer:

"The Italian school, having advanced the principle that judicial opinions deduced from natural law are those which should serve as a rule for the solution of questions which refer to the liability of a state for losses which may be the object of an international claim, has opened the way for an indefinite variety of solutions of the complex problem.

"And the jurisprudence presented is not less uniform and explicit. When the liability of Chile with regard to the losses suffered by neutral foreigners during the

war with Peru was discussed, while the Italian Government affirmed that it was its opinion 'that all losses not caused by *force majeure* or by the necessities of war should be considered as subject to obligatory indemnization,' it was the right of the local government to pass upon any losses suffered by foreigners. The Government of France declared that, according to the doctrine it had always held, 'the losses which neutrals suffer in war in strict justice are not to be indemnified and that indemnity can only be requested by *appealing to sentiments of equity*.' The English Government, even more zealous of the principle of noninterference announced the maxim that 'the foreign subjects who suffer the consequences of war have no more right to secure compensation than the natives of the country.' The Spanish Government, assuming an attitude of absolute reserve, stated that 'rather than occupy herself with the interests of her subjects prejudiced by that war she should occupy herself in maintaining amicable relations with Chile so as not to injure the political and economical interests of Spain in her ancient colonies;' and, finally, the Cabinet of Berlin absolutely evaded the expression of an opinion on the question that in any way would compromise it with the claimants, not, however, without manifesting its determination of not departing from the rule which Prince Bismarck clearly defined when he said: 'The Imperial Government does not consider itself obliged to protect its subjects who for business reasons go to a foreign land except so far as the general interests of the Empire permit.'

"The truth is, and the history of diplomatic questions during these past years clearly demonstrate it, that at the close of this century, while thinkers are making greater efforts to find in the indefinite sphere of theoretical ideas the conciliation of human differences, the government of states show more than ever a marked tendency to draw the rule of their procedure from positive opinions of practical utility."

The American Republics on their part, in defense of their rights and interests, have dedicated all their efforts against what they call an excess of diplomatic protection in support of foreign claims.

Your excellency knows that with reference to claims there are, as in all human business susceptible of investigation, opposing interests whose examination pertains alone to those who have in their hands the direct springs of justice.

To take such questions from their proper sphere in order to carry them to that of the executive power where opposing action can not be raised or admitted would be to change the natural order of things and even mix attributes and powers to the detriment of the very right alleged or to the intrinsic nature of all the circumstances in the case. A little consideration given to such a delicate question would produce the conviction that to observe such proceedings without any protest would reduce the executive departments to mere bureaus of information, and the foreign legations to mere agents, and the orders of the heads of bureaus and secretaries to the simple exercise of powers analogous to those employed without recourse in the ordinary course of civil affairs.

Fearing such an abnormal condition and careful to avoid it, governments often define in special treaties the condition of equality, so far as relates to the protection and security of persons and property, that should exist between their own subjects or citizens and those of the other contracting nation.

Forty years ago, in a treaty still in force, Italy and Venezuela so agreed. Article 4 provides the most complete parity between the subjects of the Kingdom and the citizens of the Republic living in the territory of the other, and explicitly provided such parity so far as regards the manner of obtaining indemnity for losses or damages arising from domestic discord. Therefore, in addition to the general principles of law from the principle immanent in sovereignty and the eternal and unchanging precepts of justice, there is that special reason why the Government of Venezuela should respectfully declare in reply to the note of your excellency the impossibility of accepting any of the exceptions therein enumerated relative to the claims of Italian subjects. The decree of January 24 last past, so far as it relates to such claims, and the other provisions therein cited, in so far as they are applicable, constitute the only rule which those interested can employ for the examination of the rights or titles which they allege.

Accept, your excellency, the renewed assurances of my highest and most distinguished consideration.

EDUARDO BLANCO.

His Excellency Mr. JUAN PABLO RIVA,
Resident Minister of His Majesty the King of Italy.

VENEZUELAN YELLOW BOOK, PAGES 96–101.

[Translation.]

No. 167.] LEGATION OF HIS MAJESTY THE KING OF ITALY,
Caracas, April 19, 1902.

MR. MINISTER: By order of my Government, and referring to the communication which I had the honor of addressing to your excellency's predecessor the 24th of April, 1901, No. 246, I hasten to transmit to your excellency a list of 123 claims presented by Italian subjects for the purpose of obtaining indemnity from the Government of the Republic for the damages occasioned by the civil wars during the period from 1898 to 1900.

The claims of which it treats were admitted by this royal legation after being conclusively proved in accordance with the judgment and instructions of the Government of the King, and it having recognized only the actual damages and losses, with the exclusion of moral injuries and of the loss of revenue.

The total value of the claims amount to 2,810,255.95 bolivars, for the effectual payment of which I request the Government of the Republic to deign to take the steps necessary to this end.

If the National Congress, now convened, should come to any decision relative to the adjudication of the claims of the same title presented by the imperial legation of Germany, the Government of the King requests that the identical favorable measures which that Congress shall eventually determine upon for the adjudication of the German claims or of those of any other nation shall be applied to the Italian claims.

I have the honor to inform your excellency that all the original documents in support of each of the claims will be found in this royal legation, ostensibly for the examination by a delegate of the Government of the Republic, but to facilitate such examination on the part of the Government I have ordered them copied, and I reserve the transmittal to your excellency of the 123 records until the copying of the documents in the respective cases be finished.

I have the honor of renewing to your excellency the assurances of my highest and most distinguished consideration.

G. P. RIVA.

His Excellency Señor J. R. PACHANO,
Minister of Foreign Affairs.

No. 540.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF PUBLIC FOREIGN LAW,
Caracas, April 24, 1902.

MR. MINISTER: I submitted to the constitutional President of the Republic your excellency's courteous note of the 19th instant, received in this department with a list of claims of Italian subjects for damages which they allege were occasioned by the wars which occurred in the Republic between 1898 and 1900.

In view of the fact of your excellency's beginning by referring to a communication from the honorable legation in your charge, dated the 24th of April, 1901, and using it as the subject-matter for your present communication, when the former had been answered the 2d day of May following, with a full explanation of the doctrine averse to procedure in such matters other than determined by the legislative body of the country, much surprise has been occasioned to the supreme magistrate that the request should now be presented in this form when no objection whatever had been offered to the arguments which were then advanced in the name of the national sovereignty, in support of the maxims of public law applicable to the case, and of the stipulations of the treaty in force between Venezuela and the Kingdom of Italy, in order to prove the impossibility of admitting any intervention whatever in that direction other than that foreseen by the laws which regulate it.

Your excellency knows that neither public nor private laws contain any ambiguity with regard to the setting forth of a just claim, and when this is based on approved facts and on defined circumstances all new proof or argument in its support becomes superfluous. Venezuela has legislated on this point without considering other principles than the equality of civil conditions between natives and foreigners—principles universally respected and to the practice of which the worthy Italian nation reassented in signing the treaty of June 16, 1861.

It is opportune to here state, according to the data filed in the department relative to these cases and verified by the publication made in No. 8262 of the Official

Gazette, that in the name of many Italian subjects there was presented to the "junta calificadora" (board of examiners) created by the decree of January 24, 1901, the records relative to certain alleged damages, and that that body, in the exercise of its legitimate rights, recognized such of them as appeared to have been based on those conditions which are essential to make the title valid.

In view of the foregoing and of the other antecedents which bear on the case, and to which this department has already referred in its correspondence with your honorable legation, the President considers it unnecessary to unfold other proofs in support of the impossibility mentioned; and he has given me instructions to reiterate to your excellency the manifestations made in the notes of Señor Blanco of the 30th of August, 1900, and of the 2d of May, 1901, not without adding, by way of information, that the Congress of the Republic, deferring to a suggestion made by the same supreme magistrate in his recent message, will arbitrate, perhaps very shortly, the manner for determining the matter of the claims which, through fortuitous circumstances, failed to be presented to the junta especially created for the study and qualification of those arising from the war begun in May, 1899.

The list forwarded by your excellency will be filed in this office as part of the communication of the 19th, which is here answered.

I pray your excellency to accept the renewed professions and assurances of my highest and most distinguished consideration.

MANUEL FOMBONA PALACIO.

His Excellency Señor JUAN RIVA,
Minister Resident of His Majesty the King of Italy.

[Translation.]

No. 299.] LEGATION OF HIS MAJESTY THE KING OF ITALY,
Caracas, June 28, 1902.

MR. MINISTER: As a continuation of the note I had the honor to address to your excellency on the 19th of April last, No. 167, and limiting myself to duly acknowledging the reply of the 24th of said April sent to me by His Excellency Señor Dr. Manuel Fombona Palacio, at that time in charge of the department of foreign affairs, I have the honor to remit to your excellency, in compliance with the instructions of my Government, the documents relative to the 123 claims the list of which I inclosed in my note above mentioned, and which I reserved to send until the copies of the originals, in the possession of the chancellery of the royal legation, should have been copied.

I have the honor to repeat to your excellency the assurances of my highest and most distinguished consideration.

G. P. RIVA.

His Excellency Señor Gen. DIEGO B. FERRER,
Minister of Foreign Affairs.

No. 175 bis.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, June 30, 1902.

MR. MINISTER: My predecessor in referring, on the 24th of April last, to the list of claims of Italian subjects mentioned by your excellency in the note addressed to me on the 28th instant, under No. 299, received to-day, reiterated the arguments adduced by this department in a previous correspondence in order to show the impossibility of accepting in this respect any direction other than that determined by the legislative body of the country.

All the surprise occasioned by the presentation of the list in a form considered as inacceptable was at that time expressed, and there was adduced in explanation of this surprise the reason that not the least objection had been made to any of the arguments advanced in the name of the national sovereignty, supported by the best-known principles of general law and by the stipulations of the treaty in force between Venezuela and Italy, in order to prove the impossibility of admitting any intervention in the direction of claims other than that specifically provided by the legislative body of the country.

If there was surprise then, as the legation was informed, much greater has been that occasioned by the note of the 28th instant, to which your excellency attached

a series of documents of which it is impossible for this department of itself to assume charge, for the reason that they treat of affairs pertaining to a different sphere of administration as, previously demonstrated.

On this account, and in accordance with recent instructions from the President, I reiterate to your excellency in a most respectful manner all that has been set forth in the communications of the 30th of August, 1900, of the 2d of May, 1902, and of the 24th of April, 1902, communications sufficiently explicit as to the precedents which support the rights of Venezuela in this matter, the doctrine which strengthens and the opinions which corroborate it. And inasmuch as it relates to nothing less than one of the first attributes of the state, greater must be the obligation to declare categorically and most imperatively the necessity of sustaining it in all its fullness. None of the legitimate interests which grow or are developed under the vigilance of the laws of a country can, without detriment to the most elementary principles of law, pretend that appeals of different origin from those which submit themselves to the respective regulations of the country aid in any way in their exposition or adjudication. This would be tantamount to foregoing in the present case one of the stipulations of article 4 of the treaty of 1861, and to relinquishing on certain points the operations of domestic sovereignty which alone is called upon to give the most befitting judicial solution in cases of a judicial nature, whatever may be that class to which these cases may belong.

The documents remitted by your excellency with regard to this matter can not be acted upon by this department, and must therefore remain as part of the communition of the 28th, which is here conclusively answered.

Accept, your excellency, the renewed professions and assurances of my highest and most distinguished consideration.

DIEGO BTA. FERRER.

His Excellency Señor JUAN PABLO RIVA,
Resident Minister of His Majesty the King of Italy.

VENEZUELAN YELLOW BOOK, PAGES 101–102.

[Translation.]

No. 532.] LEGATION OF HIS MAJESTY THE KING OF ITALY,
Caracas, December 11, 1902.

MR. MINISTER: In the communication of the 24th of April, 1901, No. 246, I had the honor to inform the minister of foreign affairs of the Republic that in the adjustment of the Italian claims relating to the revolutionary period beginning with the Hernandista movement, in March, 1898, and closing with the advent of General Castro to power, in October, 1899, the Government of His Majesty the King of Italy could not accept the regulations established by the decree of the Federal Executive of the 24th of January, 1901, and the Government of the King mentioned that determination, notwithstanding the argument set forth in the note of the honorable minister of the Republic, dated the 2d of May, 1901, No. 542.

Therefore the royal legation, conforming itself to the instructions of the Royal Government, examined, agreeable to the standards prescribed by the latter, the claims presented to it for the above said period, and with the communication of the 19th of April, 1902, No. 167, I had the honor to transmit to the minister of foreign affairs a list consisting of 123 Italian claims for the total sum of 2,810,255.95 bolivars, praying the Government of the Republic that it deign to take measures tending toward its payment.

By command of the Government of the King, I now address anew to the Government of the Republic the prayer that it deign to order without delay the payment of the sum of 2,810,255.95 bolivars, the amount of the Italian claims for the revolutionary period of 1898–1900, claims examined and adjudged valid by the royal legation.

I have the honor, moreover, to state to your excellency that the Government of the King expressly reserves all claims which, subsequent to the period mentioned, were or may be presented by Italian subjects, whether for damages resulting from the civil war begun in 1901, or from any other title or credit or action against the Government of the Republic, and asks, therefore, that the Government of the Republic be good enough to declare itself disposed to give to such claims the attention which may put an end to further discussion, accepting the opinion of a mixed commission.

Finally, I discharge the duty of signifying to your excellency that the Government of the King, believing that the Venezuelan Government will satisfy its demands, reserves, however, all further action in the event of the Italian claims not being equitably adjusted.

I have the honor to reiterate to your excellency the assurances of my highest and most distinguished consideration.

G. P. RIVA.

His excellency Señor Dr. R. LOPEZ BARALT,
Minister of Foreign Affairs.

VENEZUELAN YELLOW BOOK, PAGES 102–107.

No. 1460.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAWS,
Caracas, December 13, 1902.

SIR: The Government of the Republic considered yesterday the note of your excellency sent to this department on the 11th instant at 6 p. m. relative to the claims of Italian subjects, which have been the subject of correspondence with the Italian legation. Your excellency will remember the dates referring to the official regulations of Venezuela relative to that subject and also one of the numerous occasions upon which this department stated the arguments against the opinion formed upon the subject by the Government of the Kingdom. There accompanied the note a list of the claims presented on the 19th of April of the present year, and after requesting that without delay provision be made for the payment of the amount thereof, explicit exceptions are made in the name of the Government with reference to other claims that may be presented corresponding to a period later than that included in the list mentioned. The note concludes by asking for special procedure with respect to those other claims, and indicates that further action shall be reserved in case the claims of Italian subjects should not be satisfactorily arranged.

In order to fully follow the correlation of ideas relative to this subject, and which define the same, it will be necessary to repeat what Venezuela has set forth relative thereto in all the notes directed to your excellency from August 30, 1900, up to the one addressed to you June 30 of the present year; but as said correspondence has as yet been productive of no good, it will be sufficient to demonstrate, in harmony with the note of day before yesterday, that there is really no difference between the wishes of the Italian Government and the legal possibility of assenting thereto on the part of Venezuela, providing that what is desired is the security of the interests that are really identified with said claims. It is not to be presumed that the ideas of the Government of His Majesty can be different; and as every judicial opinion advanced by Venezuela in the course of the correspondence relative to this subject, far from attempting in any way to evade the fulfillment of obligations foreseen by the national laws, conformed exactly thereto according to the essential nature of each claim, as can be proved by another examination of the notes of August 30, 1900, of May 2, 1901, and of April 24 and June 30 of the current year, and the Executive power believes that there is no room for a difference, even looking at the subject from the specific point of view to which the communication of your excellency wishes to confine it, when said obligations are defined as to their character and prosecuted according to the treaty of 1861 between Italy and Venezuela. The action of the Government of the King can not go contrary to that treaty, nor can the Government of the Republic violate the same; so that in its provisions can be seen by all an efficacious guarant of the interests of Italian subjects in the particular case mentioned by your excellency. The Government, therefore, sees no reason to take the question from its natural sphere, especially at a time when the Federal Executive is using every effort to put an end to the difficulties arising from the war and others of an unforeseen nature which have embarrassed action which he has already initiated for the purpose of restoring to a normal condition the different branches of the public administration. One of these branches is precisely that to which the note of your excellency refers and to which has been given all possible attention in accordance with the provisions specially adopted by the last Congress in favor of claimants for losses caused to their persons and property by acts of the constitutional authorities of the country. As soon as the Federal Executive assured the Government of the King through his legation in Caracas of the strict application of the clauses of the treaty of 1861 the subject, which was the object of the note of day before yesterday (an application entirely in harmony with the antecedents cited), no reason for dis-

agreement could arise serious enough to change the cordial relations that have ever been maintained between the Kingdom and the Republic.

Please accept, your excellency, the renewed assurances of my highest and most distinguished consideration.

R. LOPEZ BARALT.

His Excellency Mr. JUAN PABLO RIVA,
Resident Minister of His Majesty the King of Italy.

[Translation.]

No. 542.] LEGATION OF HIS MAJESTY THE KING OF ITALY,
Caracas, December 16, 1902.

SIR: I have the honor to advise your excellency, for the information of the Government of the Republic, that the Government of His Majesty the King of Italy, as a result of the reply of your excellency of the 13th instant, No. 1460, relative to the claims of Italian subjects, has resolved to retire from Caracas its resident minister, together with the personnel of the royal legation.

I also have the honor to advise your excellency that, by virtue of the orders of his excellency the secretary of foreign affairs, I have intrusted to the envoy extraordinary and minister plenipotentiary of the United States of America the protection of Italian subjects and of Italian interests in Venezuela.

Please to accept, your excellency, the assurance of my highest and most distinguished consideration.

G. P. RIVA.

His Excellency Dr. R. LOPEZ BARALT,
Secretary of Foreign Affairs.

Note relative to the coercive action of Italy and the protocol signed in Washington by the representative of said nation.

No. 1470.] DEPARTMENT OF FOREIGN RELATIONS,
OFFICE OF FOREIGN PUBLIC LAWS,
Caracas, December 17, 1902.

SIR: His excellency the minister resident of His Majesty, the King of Italy, on the 11th of the current month, after the combined squadrons of England and Germany had already committed their first acts of hostility against Venezuela, addressed an official note to the Federal Government in order to secure the immediate payment of various claims of Italian subjects similar to those presented by the two nations mentioned with a manifestation of armed force, and, furthermore, said note was intended to secure the submission of other claims, arising at another time, to the examination and decision of a mixed commission. On the 13th the secretary of foreign affairs replied in accordance with the prior correspondence with the legation, a correspondence in which was sufficiently defined the judicial aspect of the question, after which there was set forth in the reply the formal and friendly declaration that in the judgment of the Venezuelan Government the claims should be absolutely referred to the explicit provisions of the treaty in force between the Kingdom and the Republic, and was far from opposing the perfect harmony long maintained between the two nations. The treaty to which I refer contains in article 4 a provision whose literal meaning is as follows:

"In case of revolution or civil war, the citizens and subjects of the contracting parties shall have the right, in the territory of the other, to be indemnified for the losses and damages caused to their persons and properties by the constituted authorities of the country, in the same manner, and according to the laws in force therein, by which natives themselves would have the right to claim indemnity."

Yesterday, on the 16th of the current month, while the Government was deeply engaged in searching for a solution to the grave emergency raised by the attitude of England and Germany, the representative of His Majesty Victor Emanuel III addressed another communication to the Federal Executive in order to advise him that as a result of the reply of the 13th, a reply prompted by the broadest spirit of conciliation, the Royal Government decided to withdraw its legation from Caracas and commended to your excellency the representation of Italian interests in the

Republic, a power immediately granted by the Government with the temporal condition of which your excellency is now informed and in harmony with the note of your excellency received this morning.

The act of the Government of Italy, so serious in itself, and even more serious on account of the occasion selected for its execution, not only indicates but demonstrates the existence of another conflict raised against the Venezuelan nation, as if from her poverty of material means of defense—unfortunately very far from corresponding to the magnitude and strength of her rights in the questions of claims—three powerful states of Europe have desired to make simultaneously said weakness a means of giving power to material force or to a position to which is necessarily opposed to all principles upon which rest the common peace of the people. Before that show of force, before that purpose, which seriously wounds the political equality of cultured states, Venezuela must bow, but without the claims of Italy, carried so far, and against which the Venezuelan Government solemnly protests, constituting any precedent whatsoever, in the sense of debilitating the lofty maxims, the universal principles, the foundations of judicial order, with which the executive power of the Republic was supported from the beginning of its correspondence with the legation, in order to find in the procedure provided by national laws and by the treaty in force between Venezuela and the Kingdom the only possible solution of the subject.

After the above statement, which justice demands and national sovereignty requires, the Government of the Republic fully authorizes your excellency to accept in its name and representation whatever may tend to the pacific adjustment of the question, and admits as a strictly exceptional measure the recourse of a mixed commission, after which examination shall decide the other claims of a like nature belonging to another period to which reference has been made.

Upon thus stating to your excellency the decision which the Government has absolutely been obliged to adopt by a show of force with respect to the Italian claims you are requested in the name of the Venezuelan Government to exercise the petitioned intervention in order to remedy a very grave difficulty.

Please to accept, your excellency, the renewed assurances of my highest consideration.

R. LOPEZ BARALT.

His Excellency Mr. HERBERT W. BOWEN,
Envoy Extraordinary and Minister Plenipotentiary
of the United States and in charge of Italian Interests.

VENEZUELAN YELLOW BOOK, PAGES 111–115.

Result of the debate of the National Congress on the three protocols of the 13th of February.—Report of the high commission of foreign affairs, charged with the consideration and report of the protocols signed in Washington by the Commissioner of Venezuela and the representatives of Germany, Great Britain, and Italy.

CITIZEN PRESIDENT OF THE CONGRESS:

The three protocols which the Federal Executive has just presented to the Congress as the termination of the question under dispute against the Republic by the German-Anglo-Italian alliance, can not be considered as the equal of those international agreements of normal and just character in which reciprocal interests and the mutual convenience of the contracting parties are carefully guarded. To attribute to those protocols the qualities virtually foreseen by the constitution in No. 16 of article 54 is absolutely impossible, inasmuch as they are based on conditions which the Executive power, with great courage and patriotism, in keeping with the greater abundance of knowledge, has just repelled as being contrary to the radical principles of our constitution. The agent of Venezuela subscribed to those conditions under the compulsion of force in the very moments when the waters of the Republic were occupied by the squadrons of the alliance.

The agreements then obtained are the work or effect of circumstances which do not appear to have been anticipated in any part of our legislation. They have their origin directly in events beyond all normal engagements; not in stipulations concerted under the desire of reciprocal benefit. To submit them to the constitutional procedure for examination by the Congress would be to withdraw them from the sphere of imposition in which they were prepared and signed, in order to raise them to a legal plane absolutely foreign to their peculiar nature.

Article 15 of the constitution of Venezuela forbids the Government to conclude with other nations any treaty which impairs the principles established in its articles 13 and 14; and as in none of the three protocols do those articles appear to be consulted, but, rather, manifestly omitted, one is forced to conclude that the agent of the Republic did not have in view their acceptance, but only to modify the violence of the circumstances which menaced the country under the irresistible power of the armed coalition. The condition created by those protocols is not, then, properly speaking, a lawful condition. Treating of a state of affairs truly abnormal, and itself abnormal, far from establishing any law, it excludes the application of all.

Note most clearly those irregularities on the part of the Italian portocol, wherein it refers to the treaty of June 19, 1861, since therein, at the same time that it is ratified and confirmed, its clauses are essentially modified, as if its only object were to substitute some stipulations for others, without regard to the process which is indispensable in order to give them validity. To modify a treaty in a sense contrary to that established and observed conformable to the same, for more than forty years of international life, is to annul it in all its parts, especially when it coincides in the possible coexistence of two clauses which are contradictory, by reason of containing regulations or principles diametrically opposed. If the fourth article of the treaty established, since 1861, that in the matter of indemnifications for damages resulting from civil war the subjects or citizens of one side could not have better claims than the natives of the other—the phrase introduced now in article 26, with entire confusion of ideas and of circumstances, results in establishing a difference between the two, which, to the destruction of the original stipulation, demolishes the general covenant of which it formed a part. The evident discrepancy between two articles renders impossible the existence of the treaty in which it is desired that both be contained.

The Commission deems that, given the nature of the three protocols, it is not incumbent on the Congress to exercise in respect to them the faculty conferred by No. 16 of article 54 of the constitution; and if, as seems just and necessary, it may be desired in some way to strengthen the action of the Executive in that which conduces to their inevitable fulfillment, the legislative body may limit his intervention to a faculty of concrete and exceptional character, to the end that from the abnormal circumstances which determine at this point such obligations there may never be deduced the least precedent for the political life of the Republic.

The Commission also holds that the subsistence of the treaty with Italy is neither logical nor acceptable after that established by the protocol, and that it is necessary to urge the Executive power to use the authority with which he is empowered in article 27 of the same for its immediate denunciation.

Caracas, March 28, 1903.

J. P. ROJAS PAÚL.
SANTIAGO BRICEÑO.
TOMAS MARMOL.
N. AUGOSTO B. BELLO.
TRINO BAPTISTA.
J. T. CARILLO MARQUEZ.
E. SISO.
RAFAEL TERÁN.
J. GONZALES PACHECO.

UNITED STATES OF VENEZUELA,
NATIONAL CONGRESS, No. 27, OFFICE OF THE PRESIDENT,
Caracas, March 30, 1903.

92d—45th.

CITIZEN PRESIDENT OF FOREIGN AFFAIRS, PRESENT:

With your official letter of the 27th instant, No. 271, I received the three protocols which the agent of Venezuela with the representatives of Germany, England, and Italy signed in Washington the 13th of February last.

And I have the honor to state to you that after their discussion in the session of the 26th ultimo, the Congress sanctioned the two resolutions which I herewith remit to you.

God and federation.

J. A. VELUTINI.

The Congress of the United States of Venezuela:

Whereas the protocols drawn up in Washington the 13th of February last by the agent of Venezuela and the representatives of Germany, Great Britain, and Italy were concluded and signed in the midst of a situation of force created in the Republic in a manner as unforeseen as it was abnormal; and

Whereas such documents can not on that account be considered according to the form established for diplomatic negotiations begun, followed up, and concluded in the regular way:

Be it resolved, To withhold from the aforesaid protocols the sanction of the constitutional procedure pertaining to diplomatic treaties and to limit its action in regard to them to authorizing the Federal Executive that he put them in operation, without permitting that any of their clauses establish the least precedent in the political life of the Republic.

Given in the Federal legislative palace, in Caracas, the 28th day of March, 1903, the ninety-second year of independence and the forty-fifth of federation.

The President of the Senate,

J. A. VELUTINI.

The President of the Chamber of Deputies,

RAMÓN AYALA.

The secretary of the Senate,

EZEQUIEL GARCIA.

The secretary of the Chamber of Deputies,

M. SILVA MEDINA.

The Congress of the United States of Venezuela:

Whereas the interpretation given in the protocol, signed with Italy the 13th of February last, to the treaty of the 19th of June, 1861, and the amplification or modification of some of its clauses render impossible the subsistence of said treaty, inasmuch as it is in flagrant contradiction to some of its original stipulations and of the principles which by virtue of the same were mutually observed by both parties:

Be it resolved, To urge that the Federal Executive with the utmost dispatch make use of the power contained in article 27 of said treaty with regard to its denunciation.

Given in the Federal executive palace, in Caracas, the 28th of March, 1903, the ninety-second year of independence and the forty-fifth of federation.

The President of the Senate,

J. A. VELUTINI.

The President of the Chamber of Deputies,

RAMÓN AYALA.

The secretary of the Senate,

EZEQUIEL GARCIA.

The secretary of the Chamber of Deputies,

M. SILVA MEDINA.

VENEZUELAN YELLOW BOOK, PAGES 235–249.

CORRESPONDENCE RELATING TO THE REVOLUTIONARY STEAMER BAN RIGH (LIBERTADOR) AND TO THE ATTITUDE ASSUMED BY THE AUTHORITIES OF TRINIDAD.

No. 1635.] DEPARTMENT OF FOREIGN RELATIONS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, December 31, 1901.

SIR: By decree issued yesterday, and which your excellency will find in the Official Gazette inclosed, the Executive power declared as pirate the vessel which under the name of *Libertador* navigates in the waters adjacent to Venezuela and is notoriously in the service of the present disturbers of the interior peace of the country.

In communicating this measure I have the honor to ask that your excellency transmit it to the Government which you so worthily represent, with the request of the Executive power of Venezuela to the effect that at the arrival of said vessel in port or waters of Great Britain or her colonies it be detained, in conformity with the principles of international law applicable to the case, while the Executive power substantiate effectually the proof of the circumstances which have placed the said ship in that condition.

I renew to your excellency the assurance of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,
Resident Minister of His British Majesty.

[Translation.]

BRITISH LEGATION, *Caracas, January 3, 1902.*

MR. MINISTER: The articles of the decree which accompanied your excellency's note of the 31st of last month attribute to refugees in the Antilles conspiracy against the peace of Venezuela even to the point of arming a vessel of war, and present as proof assertions to that effect—advanced by General Matos in an address made on board that boat, presumably the *Ban Righ*, or *Libertador*.

I have seen the address of that gentleman in the papers and I can find no such assertion from which such inference could be drawn. It is, moreover, a well-known fact that General Matos came recently by steamer directly to Martinique from Europe and that the *Ban Righ* also came directly there from Europe without touching, as I can affirm, above all, at Trinidad.

That decree, immediately declaring the *Ban Righ* a pirate, says that it should be punished as such, and offers a reward or prize to the war ships of all nations for her capture, as well as to all private ships provided with a license to sail in Venezuelan waters.

The only reason given in the decree for this declaration is that the *Ban Righ*, which had changed its name to that of *Libertador*, is not provided with the license of any nation and therefore forfeits its right to navigation.

Without entering into the question as to whether or not this constitutes a sufficient motive for its being declared a pirate, I am in position to state to your excellency that the Venezuelan Government has evidently been misinformed with regard to finding this boat unprovided with papers, as I have just learned officially that the *Ban Righ* carries the English flag and is provided with British papers. As, therefore, the basis of this declaration is not exact, the declaration itself falls *ipso facto* to to the earth. It is not, then, a pirate, nor in any way conformable to the conditions for such qualification which are set forth by the Venezuelan Government in this decree.

The Government of His Majesty has informed me that I might indicate to your excellency that it approves the language which I had the honor to officially address to your excellency the 31st of last month, advising the Venezuelan Government, in a most friendly and at the same time most serious manner that it avoid any infraction of international law with regard to British lives and properties in case of the capture of the *Ban Righ*.

As this notice was given when, as the Government of His Majesty knows as well as your excellency, I was not certain as to whether or not the *Ban Righ* was a British ship, and as I now, moreover, not only know that it is of British nationality, but likewise that it in no way complies with the condition stated by the Venezuelan Government by which it may be considered as a pirate, this approval would now seem to have double force.

I avail myself of this opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Señor Gen. J. R. PACHANO,
Minister of Foreign Relations.

[Translation.]

BRITISH LEGATION, *Caracas, January 5, 1902.*

MR. MINISTER: In your excellency's note of the 31st of last month, you inform me that a boat named *El Libertador*, which is known to be in the service of some insurgents, is navigating in Venezuelan waters, and at the same time you ask that I communicate to my Government your excellency's request so that in the event of this ship's arrival in the waters of Great Britain or her colonies, it may be detained in conformity with the principles of international law.

I have the honor to inform your excellency, in reply, that without loss of time I shall forward this request. In the meanwhile, refraining, as in my last note, from entering into the general question as to whether in conformity with those principles this ship may be considered as a pirate—"hostis humani generis"—and without repeating the evidence contained in my reply that it is not a pirate, even according to the reasons advanced by the Venezuelan Government as proof that it is, I may assure the Venezuelan Government that that of His Majesty will proceed, as it always does in such cases, in conformity with the rules of British and international law.

I avail myself of this opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Señor Gen. J. R. PACHANO,
Minister of Foreign Relations.

No. 22.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, January 7, 1902.

MR. MINISTER: The President of the Republic found your excellency's note of the 3d, relative to the revolutionary ship which, under the name of *Libertador*, is navigating in waters adjacent to the coast of Venezuela in an attitude hostile to the constitutional power, deserving of most serious consideration. Your excellency says that you have official information to the effect that this ship carries the British flag and is provided with British papers.

The fact of a steamer manned by persons inimical to the Government of Venezuela and notoriously employed in revolutionary operations being found under such circumstances is so grave a matter that its existence could scarcely be conjectured were it not testified to by that worthy legation.

The cordial relations which the Government of this Republic cultivates with that of His Majesty induce the belief that the British authorities or agents who held some part in the commission of the ship could not have proceeded with a precise knowledge of affairs, or have operated perhaps in an indirect way, since otherwise there would attach to them a very grave responsibility for which your excellency's Government would be held answerable in the spirit of justice with which every civilized nation like Great Britain surrounds its acts and in conformity with the sincere sentiments which characterize its relations with this Republic.

The Government desires frankly to go into the earlier phases of this delicate subject, and with this end in view counts upon the friendly attitude of Great Britain.

As to the condition in which its own operations have placed the ship, and of which the decree of the 30th of December treated, the Government feels unable to accommodate itself to your excellency's view, as stated in the aforesaid note as well as that of the 5th instant.

The opinion set forth in the matter by your excellency is at variance not only with that held by other countries, but with the jurisprudence established by Venezuela and which was the same in an analogous case accepted by Great Britain. I give here the precedent:

On the 15th of May, 1882, Gen. Guzman Blanco, in his character of President of the Republic, issued a decree based on circumstances similar to those which obtain at present and of which information was given to the British legation for reasons also analogous to those which called forth my note of the 31st of December. The honorable Mr. Malo O'Leary replied on the 17th of that month, informing me that he had referred the subject to London and to Puerto España, without adducing any reason against the measure nor even by way of reserve. And while at the very time the minister of Venezuela at the court of His Majesty might have been recommending that action be taken there was received from Lord Granville the reply, a copy of which is inclosed to your excellency in order that it may please you to consider how different an opinion then guided the action of the British Government and how differently it regarded the request of Venezuela. The principles of friendliness between the colonies and the Republic were more in evidence then than now, although for the moment the cause of the difference which the legation has wished to establish is not discovered.

Thus, in view of the foregoing and of the fact that the hostile attitude of the steamer *Barrigh*, called now *Libertador*, is clearly established, the President of the Republic hopes through your excellency to see categorically accepted the opinion that, not only by the Venezuelan Government but likewise that of His Majesty,

said boat is a pirate, and with so much more reason, inasmuch as said boat in making use of the English flag, as it is now doing in acts contrary to international maritime law, it is deserving of repression and punishment on the part of Great Britain and by virtue of its own internal laws.

Accept, your excellency, renewed protestations and assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,
Resident Minister of His British Majesty.

[Translation.]

DEPARTMENT OF FOREIGN AFFAIRS, *July 6, 1882.*

MR. MINISTER: I have the honor to acknowledge the receipt of your letter of the 22d of last month, in which you call my attention to the proceedings of a steamer known under the name of *Cantabro*, alias the *Colon*, which, as you inform me, does not carry National papers and has committed several acts of piracy in the waters of Venezuela and on the heights of the Venezuelan coast.

In reply I take the liberty to state to you that you may inform your Government that, in view of the reports which have been sent to the metropolis by the agents of His Majesty relative to the movements of the boat, orders have been given to the commander in chief of the North American station and the Antilles, to the commodore at Jamaica, and to the first naval officer in the Barbados to the effect that if any of His Majesty's ships meet it, they should take measures to verify its papers and its nationality. The report which has been received with respect to this boat has also been communicated to the governor of Trinidad and to those of the other British colonies in the Antilles.

I have the honor to be, Mr. Minister, with the highest consideration,
Your very obedient and humble servant,

GRANVILLE.

Señor DE ROJAS.

No. 56.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, January 14, 1902.

MR. MINISTER: On the 3d instant your excellency notified the Government of the Republic that you had received official information to the effect that the steamer *Ban Righ*, which had changed its name to that of *Libertador*, and which the executive power has recently declared a pirate, flies the English flag and is provided with British papers. Such circumstance was considered as of the utmost gravity, inasmuch as the Government was possessed of categorical proofs of the hostility of the boat and sufficient reasons for believing that it was sent to Venezuelan waters in the manifest connivance with the rebels existing in two of the Venezuelan States. The proclamation sent to the ship amounted to a full confirmation of the above statement, notwithstanding the slight significance which is attributed by your excellency to this act of rebellion against the National Government.

Shortly afterwards the sloop *Santa Clara* arrived in the neighboring port of La Guaira, with the work of death wrought by this same pirate boat, and subsequently it was learned that the crew of the latter had sheltered the revolutionary refugees at Trinidad and Curaçao, as is general and notorious in said Antilles, with a view to conducting them secretly to the coast of Venezuela and there facilitating their disembarkation.

Although the British nation, from whose ports, according to your excellency's own report, the aggressive ship sailed, counts among its laws such adequate measures as that entitled "Foreign enlistment act of 1870," the Government has heard nothing of its purpose to bring to judgment and punishment those who contributed to its armament. And if, as we are obliged to suppose, the Government of His Majesty does not uphold the conduct of the privateers and crew of the ship, it is to it to whom, primarily, seems to belong the promotion of justice in their consequent punishment. Neither maritime law nor any concrete principle or maxim of international law can protect a boat placed in such abnormal conditions; and as the Government of Venezuela has ordered that a part of the national fleet go in search of it and give it chase

or destroy it, according to the necessities of natural defense, the President desires that your excellency be thoroughly acquainted with the recent acts confirmatory of the culpability of the ship, for the reason that subjects of His Majesty incorporated in its crew fall beneath the natural and just action of the hostilized country.

At the same time the Government wishes to solemnly protest against the unusual fact of there having been armed, equipped, and dispatched in British ports a ship directed to the injury of Venezuelan commerce and to the disturbance, by means of piratical operations, of the tranquillity of the Republic.

The circumstance of the aggressive movement having been prepared in His Majesty's waters, while the British Government and that of Venezuela are cultivating relations distinguished for their cordiality, gives greater force and significance to said protest.

In order that your excellency may better understand some of the acts consummated by the pirate ship, I inclose herewith a certified copy of the depositions made in regard to the attack upon the sloop *Santa Clara*, depositions in which your excellency will find other circumstances which show the revolutionary character of the ship in contradistinction to that of lawfulness which, according to the reports of your legation, might be attributed to it.

Please accept, your excellency, new protestations and assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,
Resident Minister of His British Majesty.

[Translation.]

BRITISH LEGATION, *Caracas, January 11, 1902.*

MR. MINISTER: I should be much indebted to you if you would inform me definitely if the ship to which you allude in your notes of the 31st of last month and of the 7th of the present month under the name of *Barrigh* and *Libertador* is the same boat as the *Ban Righ*.

My reason for asking information on this point is that, though I had the honor in my note of the 3d instant of alluding to the discrepancy in the names, in your note of the 7th you again speak not of the *Ban Righ*, but of the *Barrigh*, called at present *Libertador*.

Now I know nothing of any boat of that name, or of those names, except through allusions and accusations against it contained in the decree of the 30th of December and in your excellency's notes.

But if you will do me the honor to refer to my note of the 3d instant, you will see that I state officially that the *Ban Righ* carries the British flag and is provided with British papers.

This information reached me on the same date from the consul of His Majesty at Martinique, who said, just as I thought, that the *Ban Righ*, which carries the British flag and was provided with British papers, had sailed from Fort Royal on the 1st instant.

Consequently it could scarcely be found unprovided with papers the 30th of December, date of the decree, as happened with the *Barrigh* or *Libertador*, as it is there called; it could not, therefore, be a pirate on that date nor even conform to the very unusual, not to say insufficient, definition given by the Venezuelan Government. Wherefore, if the report of the consul is exact, until the first of the year or after the *Ban Righ* was at Martinique with the British flag and British papers. Supposing, therefore, that the Venezuelan Government designated this boat by the name of *Barrigh*, I informed it, as soon as possible, that the assertion of the decree of the 30th, to the effect that on that date it was not provided with papers, was not exact.

Of its subsequent movements I know nothing.

If in your excellency's supposition to the effect that "the British authorities or agents who had to do with the dispatch of the boat could not have proceeded with an exact knowledge of the facts," your excellency sought to express that there may have existed some irregularity as to the way in which the *Ban Righ* left England, I think that on this point your excellency may be at rest, since always when a boat is dispatched from English ports everything must be regular and orderly. Your excellency, moreover, may be perfectly sure that if it be proved that the boat is a pirate, not only in the opinion of the Venezuelan Government but in that of international law and of the Government of His Majesty, the last would be charged with the responsibility which your excellency says belongs to it, as the alternative of the

fault of dispatching the boat, and that the piratical career of the boat would be cut short if it were to encounter one of His Majesty's ships.

Your excellency mentions that in raising the British flag it is committing acts contrary to international maritime law. If your excellency will submit to me proofs of this assertion, I will transmit them to His Majesty's Government, who, without doubt, will investigate the subject without loss of time.

In the meantime, in order to assist the Venezuelan Government in the consideration of the question relative to the degreee of responsibility actually incumbent upon the Government of His Majesty in this case, according to international law, I ask if Venezuela is at present at war with another nation, and if it is, if Great Britain has been made a base of military supplies by its opponent.

If the *Ban Righ* were unprovided with papers, as is erroneously stated in the decree, that would not constitute it a pirate occupied in "robbery or violent depredation on the sea, *animo jurandi*," a legal description cited to your excellency by my American colleague in his note of the 4th instant, as the legal definition of piracy. Mr. Bowen in using this generally received definition of this "detestable and atrocious crime," and in arguments founded on it, seems to have proved that the United States at least is not among those countries which, as your excellency says, dissent from my opinion in regard to the character of that crime. I think that your excellency will find that the legations of the United States and England are not in any way singular in our opinions.

Your excellency may add that my opinion is averse to the jurisprudence of Venezuela. Of that I do not know, but you will pardon me if I observe that piracy is preeminently a crime which should be treated with reference to the precepts of international law, according to which the pirate is described as *hostis humani generis;* that is, essentially an enemy, not only of the Venezuelan people, nor of any one other country, nor even of any one part of such country; wherefore the jurisprudence of Venezuela would not come into account in any way in the consideration by other nations as to what might constitute an act of piracy, except so far as it may be in acc ord with the principles of international law.

With reference to your excellency's statement that the Venezuelan Government does not agree with my note of the 5th instant, consulting that document, I find it difficult to understand to which part of it you refer.

The object of the note was to state that I would defer, without loss of time to your excellency's request, directing me to inform His Majesty's Government that it was hoped that in the event of the arrival of the ship in the waters of Great Britain or its colonies, it would be detained in accordance with the principles of international law, and to assure your excellency that the Venezuelan Government might be certain that that of His Majesty would operate in conformity with the precepts of British law and with those of international law. The Venezuelan Government can surely make no objection to that.

Should I understand, therefore, that this objection of the Venezuelan Government is applied to the parenthesis and that it maintains in favor of the jurisprudence of Venezuela that a ship must be considered a pirate by other nations simply because it desires that it be so considered, against all international law, and, as I have shown, even against the proved fact of the inexactitude of its own and singular assertion in support of its pretension—that of the lack of papers—or is it that the *Ban Righ* and the *Barrigh* are two distinct boats?

Your excellency goes on to cite a previous incident, and is good enough to inclose me the copy of a note from Lord Granville to Senor Rojas, dated the 6th of July, 1882, as applicable, in the opinion of the Venezuelan Government, to the present case.

But I find in that note, besides the identical assertion advanced against the *Barrigh* or *Libertador*, that the *Cantabro* or *Colón* was not provided with national papers; that Senor Rojas had complained that the latter boat had committed various acts of piracy, and that Lord Granville in his note informed the Venezuelan minister that "in consequence of the reports sent to the metropolis by the agents of His Majesty, orders had been given" to the persons whom it concerned that, "if it is encountered by any of His Majesty's ships they are to give it chase in order to verify its papers and nationality," not—observe this—that it be treated as a pirate, nor even that it be brought to port in order to be judged.

In the present case, however, as I previously demonstrated, the only definite charge made against the ship by the Venezuelan Government—that of being unprovided with papers—was evidently, at least at the time when it was made, inexact. That accusation has not been repeated since, and there is no allegation of their having been committed any piratical act, even from the Venezuelan point of view. There is, therefore, no initial analogy between the two cases. Moreover, your excellency will observe that the instructions to verify the papers and the nationality of

the boat, if it be met, were sent out in consequence of the "reports of the agents of His Majesty, relative to the movements of the boat," and therefore not until or until similar reports reach the Government of His Majesty in this matter—of which I am altogether ignorant—there is no similarity whatever between the two cases on this point either.

Therefore the analogy which your excellency may have wished to establish between the two cases falls to earth.

Your excellency says it is hoped by the Venezuelan Government that the opinion that the boat under discussion is a pirate—not only in the eyes of the Venezuelan Government but also in those of the Government of His Majesty—may be accepted, but it seems that the only ground for such an opinion is that it "is navigating in waters near the coast of Venezuela in an attitude hostile to the constitutional power (Venezuelan) manned by persons inimical to the Government of Venezuela, and notoriously employed in revolutionary operations."

All this may serve to indicate that the boat under discussion may be engaged in fomenting a revolution, but what evidence of piracy is there in this? And yet your excellency desires and asks that the Government of His Majesty may treat as guilty of piracy a ship against which you could not yourself present not only any proof, but not even any well-founded accusation of its being guilty of such a crime. I can, however, assure your excellency that, if the *Ban Righ*—if it is an English ship or otherwise subject to our jurisdiction—commit any piratical crime whatsoever against international law, just measures will be taken in the case, and that, although on one hand the Government of His Majesty can do nothing contrary to international law nor interfere in any way in the internal affairs of Venezuela (which, to judge from opinions so often expressed by the Venezuelan Government on this point, is, I am convinced, the last thing that your excellency would desire), on the other the Government of His Majesty could never countenance any illegality or crime against the principles of international law committed by British subjects against the Venezuelan Government, in the same way that it could not fail to resent any illegal violence whatever committed against the subjects of the King.

I shall avail myself of the first opportunity to transmit the opinions of your excellency to my Government, which will be pleased, no doubt, as your excellency requests, to aid in elucidating the antecedents of this delicate subject and to exercise its good will toward Venezuela in this matter, according to, of course, and subject to, the dictates of British and of international law.

I avail myself of the opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Señor Gen. J. R. PACHANO,
Minister of Foreign Affairs.

[Translation.]

BRITISH LEGATION, *Caracas, January 17, 1902.*

MR. MINISTER: It is not the object of this note to answer that which your excellency did me the honor of addressing to me on the 14th instant, but to correct an erroneous assertion contained in the latter.

Your excellency alleges that I have advanced the assertion that this "hostile boat" was sent from the ports of Great Britain.

I regret that your excellency should have attributed to me in an official note assertions which I not only have not made, but which would have been impossible for me to make, since the only knowledge which I have on this subject is that which I get from the newspapers, where I have seen, on the contrary, that the *Ban Righ* was equipped and subsequently dispatched not in the port of London but in that of Antwerp.

If this is the case, "the solemn protest of the Venezuelan Government against the unusual fact of the equipping and dispatching from English ports of a ship with the purpose of injuring Venezuelan commerce, and of disturbing by piratical operations the peace of the Republic, etc.," can in no way apply to the present case.

Your excellency seems to have confounded the fact of a boat's possessing English papers with its equipment and subsequent dispatch from English ports—two very different matters.

Nevertheless, even supposing that the boat should have been equipped and dispatched from an English port, I should not enter into the question of the unusual responsibility which, even though on the part of Venezuela no declaration of war

has been made, nor have the parties engaged in the revolutionary contention been recognized as belligerents, the Venezuelan Government attributes to the Government of His Majesty, founded on the strength of an evidently erroneous allegation, as therefore I have already informed your excellency I have done with your previous communications, I shall transmit this note without loss of time to the Government of His Majesty, which will give it the most careful consideration.

Therefore I wish only to avail myself of the opportunity to inform you that until its instructions are received in the matter I do not propose to enter into any further correspondence on this subject, but in view of the circumstances contained in your excellency's note to which I reply that you speak somewhat enigmatically of the fate which may befall British subjects in case they be incorporated in the crew, if it is captured, I shall limit myself to again insisting that if the crew is captured and in it any British subjects are found, they can not be treated as pirates.

I avail myself of this opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Señor Gen. J. R. PACHANO,
Minister of Foreign Affairs.

VENEZUELAN YELLOW BOOK, PAGES 249–256.

No. 115.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, January 25, 1902.

MR. MINISTER: Your excellency begins your communication of the 11th instant, received in this office the 15th, with an expression of doubtful opinion concerning the name of the ship lately declared a pirate by the Government of Venezuela, and even asks if the *Barrigh* and *Libertador* are the same *Ban Righ* which recently sailed from Martinique carrying the English flag and provided with British papers. As your excellency charges himself to recall that in your communication of the 3d the discrepancy in the names was incidentally referred to and bases the present inquiry on the circumstance of this department's having later designated the ship in the same way as in the decree of the 30th of December, it seems useless to confirm here that which my silence in respect to that rectification was and is clearly demonstrating.

Your excellency then proceeds to deduce that the ship referred to was not a pirate on the date of the decree, inasmuch as it sailed from Martinique on the 1st instant, according to the reports of the consul of His Majesty, still provided with British papers; but as such a deduction appears inacceptable—unless the ship be considered as a trader, to the exclusion of artillery, ammunition, and of the revolutionary people which it carries—it is necessary to withdraw from that inference in order to enter into the consideration of the facts conformable to the actual circumstances.

Maritime law, in whichsoever of its branches it treats—private, public, administrative, or international—has fixed rules from which it is not possible to depart without injury to the general interests of commerce and without declaring one's self in open rebellion against the laws of all civilized nations.

The papers of navigation which constitute, as it were, the moral nature of each ship give testimony of its legality or show, as the case may be, its vicious condition. If they have been issued for the exercise of a lawful traffic, and the ship which carries them afterwards brings confusion to an established country by collecting raw recruits for the purpose of landing them in deserted places, in carrying munitions of war from one point to another, and in boarding ships on the high sea, the use of these papers, however legitimate may be their origin, is equivalent to a transgression of extreme gravity, uniting fraud to the other acts committed.

The change of name is, in itself alone, a strong indication of culpability, especially if it occurs in papers issued by Great Britain, where, as in France, the prohibition of change of name is absolute. (Prad. Fod., sec. 2, 287.) Such a change is not probable unless there be designs opposed to the general tranquillity of commerce. The attitude of the ship *Libertador* can not be considered legal by any nation, and least of all by Great Britain.

With regard to the manner in which the *Ban Righ* (*Libertador*) may have left England, your excellency says that the Government can be entirely at rest, because, inasmuch as it sailed from English ports, it presents conditions of regularity. Against that assertion, which the Republic can only accept for the present occasion with all possible reservation, your excellency states that if the ship is considered a pirate,

not only in the opinion of Venezuela, but conformable to international law and according to the judgment of the British Government, the latter would accept the responsibility of the case; moreover, that its piratical course should be stopped if the boat were encountered by one of the ships of the British navy.

This last is exactly what Venezuela has asked; and as that legation already has proof of the acts of piracy committed by the ship, the necessity of further solicitation or the presentation of other data for the usual procedure could not be understood. The same, in effect, occurred in 1882. Lord Granville accepted the opinion of Venezuela with regard to the *Cantabro* and dictated the required orders for its examination on the high seas and the verification of its papers. The difference which your excellency seems to find between that case and the present one rests on a basis or principle very easily removed. Your excellency says, in the first place, that the British orders were issued then in consequence of reports sent to the capital by agents of the Government of Her Majesty, and adds that they referred only to the examination of the papers and to the nationality of the ship. To this I will observe that if at the present time reports entirely analogous to those of 1882 have not been communicated to the capital, it must be through the negligence of the British agents and not through the fault of Venezuela; and that if the orders of that time were not extended from the beginning to the capture and sentence of the *Cantabro*, it must have been due to the gradation natural in every affair or circumstance of that kind, which commences always by verifying the facts in order to determine thereby the proper mode of procedure. A ship not accused of culpability is never detained nor its papers examined.

In order to ascertain the nature of the responsibility which may fall to the share of Great Britain in the matter, your excellency asks if Venezuela is actually at war with another nation; and if so, if Great Britain has been made a center of supplies for the enemy. The question causes surprise, as your excellency well knows, through my communication of the 31st of last month, that the declaration of piracy was not made with respect to any ship of a foreign navy, but with relation to a boat given up to illegal forays in connivance with the disturbers of the internal peace of the Republic. But, notwithstanding the surprise which it occasions, the question of your excellency gives rise to certain considerations into which I enter at once, in compliance with command of the President, in order to define, with the concurrence of your excellency, a point which appears to present the gravest international interest.

According to the expression of your excellency, or to that which it suggests, the hostile attitude of a ship, in such conditions as the *Libertador* is found to be, would, during a state of war with another country, be a more serious matter and deserving of greater punishment than under the present circumstances. This, in my opinion, is new in the law of nations. The state of war between two countries produces the effect of belligerency and with it the duties of neutrality well understood and known. One of these duties consists in not permitting the departure of armaments or expeditions to aid any of the belligerents. England stretched this duty to such a point during the Franco-German war (1870–1871) as to order the detention in the Thames of a boat—the *International*—which was carrying aboard the submarine cable with which France thought to connect Dunkirk with Cherbourg, Brest, and Bordeaux. The request or complaint of Count Bernstorff, ambassador of Prussia, was immediately heeded. Three hours after it was presented the vessel was detained. If such were the strict practice exercised on this point by reason of the contention between two countries who operate, respectively, from the firm seat of their own sovereignty, what must be the result to those who have no representation, either national or international, who wander through the seas without justifiable purpose, and are given up to revolutionary deeds against defenseless coasts? What privilege, what exemption, what prerogative can legalize such difference to the point of leaving the pirate in superior conditions to a ship of the government and powers which proceed in their mutual hostilities according to the customs and laws of warfare? I would respectfully invite your excellency to explain this point so as not to leave established an opinion vague and uninterpretable in regard to so delicate a matter.

If the *Libertador* is to cross the seas, enter foreign ports, go aboard or destroy vessels, and make landings without regard to any of the restrictions which international law imposes in time of war even on the naval ships of a belligerent power, one will be forced to conclude that to the interest of commerce and liberty of navigation a new danger has arisen, the more alarming inasmuch as it does not originate from the contention of two nations, but from the individual will of everyone who wishes or is able to equip a ship of revolutionary character and perform hostilities with it against any organized country. The treatment due to piracy would be the only remedy for so great an offense. A ship under such conditions can be nothing but a pirate.

"Privateers (says Masse) are different from pirates in that they are authorized by their respective rulers to cruise the seas in time of war, while the pirates overrun the seas at all times without commission from any power. Privateering is a delegation of the right of war made by a sovereign to his subjects against the subjects of an unfriendly nation, or one that is supposed to be so." (Droit commercial, vol. I, sec. 154.) And now is the time to ask: What ruler has ventured to authorize the ship called the *Libertador* to receive munitions and carry them to the coast of Venezuela in a stealthy manner, or to collect in the Antilles, also in a secret manner, people destined to disturb in the territory of this Republic the usual industry and commerce? Which government has conferred on it the right to detain at seas, as it did with the sloop *Santa Clara*, vessels employed in peacefully transporting fruits or merchandise to Venezuelan ports?

Recourse to any treaty of extradition among those recently concluded by Great Britain would suffice to show that it includes deeds similar to those committed by the *Libertador* among the acts of piracy. One of the treaties, that arranged with the Argentine Republic the 22d of May, 1889, and ratified the 15th of December, 1893, scarcely eight years ago, in enumerating the transgressions which shall be cause for extradition, says as follows:

"22. Piracy and other crimes or transgressions committed at sea on persons or things, and which, *according to the respective laws of the two high contracting parties*, may be extradition offenses, punishable with a sentence of more than one year."

Without attempting to discern if the British law does or does not consider the deeds committed to the present time by the ship *Libertador* crimes for extradition, it would be sufficient, according to the understanding of that article, that the other party consider them as such in order to require of Great Britain the consequent procedure.

In the treaty of March 15, 1839, between Venezuela and the United Kingdom, entered into for the purpose of abolishing the slave traffic, the two nations agree (art. 4) to establish by additional convention the acts which should constitute piracy, including the traffic of slaves, and requiring, after said convention, the legislative power of both countries to enact laws for the punishment of said acts committed by the subjects or citizens of each. Now your excellency will see how the essential acts which constituted piracy were to be punished by each of the two countries, with regard to the subjects or citizens of the other. The understanding which prevailed in that treaty does not appear to be the same which now guides the legation.

With regard to your excellency's not understanding to which part of the communication of the 5th mine of the 7th made objection, I think it sufficient to refer to the very communication which I am now answering, which in respect to the point mentioned reads as follows:

"I must understand, therefore, that the objection of the Venezuelan Government is applied to the parenthesis."

If you excellency, yourself, found the explanation, it would seem unnecessary to explain it, except to call attention to the fact that the jurisprudence invoked by Venezuela was admitted by an English statesman so well known as Lord Granville.

Here the response to the communication received the 15th might be ended, and the appreciation of the fact left to the Government of His Majesty, were it not that another communication from your excellency, that of the 17th, obliges me to consider a point in it which your excellency considers an error on my part. Your excellency bases the mistake which he there attributes to me upon the connection between an understanding of the communication of the legation dated the 3d and the protest presented through this Department on the 14th, in consequence of the boat declared a pirate of having sailed from the ports of Great Britain. A little reflection on the subject will explain the supposed error. In the communication of the 3d your excellency said he had official information that the vessel *carried the English flag and was provided with British papers*. Such were the words of your excellency, and now the question arises: What does the provision of English papers signify? Does it mean that the ship proceeds from ports foreign to the English authorities and that its patent of navigation, its roll, etc., may have been issued by a simple British deputy in some strange place? Such supposition is impossible. Your excellency knows what the said papers of a ship represent (*papier de bord; lettres de mer*), and also knows that its patent of navigation can not be certified except by an officer authorized by the Executive. (Calvo, sec. 429). This officer, whatever his position, can only be within the territory from which the ship was originally dispatched. A vessel sailing thus from British ports may stand in shore at other points more or less near, and complete in them its cargo without this exempting

either him who equips it or the authorities interested in its dispatch from the responsibility attending the destiny or the irregular employment to which the ship may give itself. Wheresoever the ship may go, its papers will be the only proof of its legality. The relation between them and the conduct of the ship can not at any time whatever be interrupted or falsified without grave responsibility. If it were otherwise, the universal rule established for the recognition of vessels under certain conditions by means of the examination of their papers at sea would have no object.

If it were treating of a boat belonging to regular lines of navigation, which on its return from any of its respective terminal points should take aboard arms destined to harm a friendly people, the conception of the responsibility would be different; but the simple putting in at Antwerp to take goods of one class or another is not an act which would change the original sailing point. In the protest of the Venezuelan Government no point was designated; it simply spoke of the sailing from English ports. The citing of that of London, which your excellency now does, is a new subject, the explanation of which does not concern the Government of the Republic, but His Majesty's legation itself.

From the assertion made in your excellency's communication of the 3d, one might presume that the boat had been constructed in the dominion of His Majesty's and the owners of it, or some of them, were British subjects, and that the captain and at least three-fourths of the crew or mariners were of the same nationality. If on investigation the circumstances of the ship are found to be without precedent, to the previous responsibility there could be added that imposed, *ipso facto* by article 7 of the treaty of 1825–1834, in which are established those conditions by which Venezuela may consider a ship as British. To the acts of piracy committed by the ship would be added another of such irregularity as the raising by her of the British flag without the intrinsic right which the case would require. So that among the investigations asked by Venezuela it is necessary to include those relative to the place of construction, to the person or persons who own the ship, to the nationality of its captain, and to that of three-fourths of the crew.

Even though your excellency declares there will be no more correspondence on the subject, the Government expects the categorical explanations to which it is entitled owing to the friendly relations which it entertains with that of His British Majesty, and proving as it does, that the ship referred to has committed acts of hostility and piracy against the Government of Venezuela and its commerce, for which it has made use of the commission of that of His Majesty and the English flag.

Accept, your excellency, further protestations and assurances of my highest and most distinguished consideration.

J. B. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,
Resident Minister of His British Majesty.

VENEZUELAN YELLOW BOOK, PAGES 257–286.

BRITISH LEGATION, *Caracas, January 24, 1902.*

MINISTER, SIR: As I had the honor to inform your excellency, verbally, this morning, I have received instructions from His Majesty's Government to inform you, relative to a conversation which I had with your excellency on the 21st instant and which I communicated to the Marquis of Lansdowne that the *Ban Righ* left England in November, and that the Colombian minister, who was in London, having shown that the vessel was destined to the service of his Government, and that no war existed between Colombia and any other Power, there was no reason whatever for detaining the ship.

I avail myself of this opportunity to reiterate to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,
Minister of Foreign Affairs.

No. 116.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, January 27, 1902.

MINISTER, SIR: The note of the 25th, No. 115, had been already written when that of the 24th from your excellency was received confirming the information relative to

the sailing of the *Ban Righ* (*Libertador*) in the month of November last from English ports. As I was unable to acknowledge in mine the receipt of your letter by this office, I do so now, and at the same time I have the honor to reiterate to your excellency the assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,
Minister Resident of His Britannic Majesty.

BRITISH LEGATION, *Caracas, February 6, 1902.*

SIR: I have the honor to acknowledge your excellency's note of the 25th instant, relative to the *Ban Righ*. It is unnecessary for me to follow your excellency in the arguments of common law as applied to this case, as they have already been adduced by the minister of the United States in his note of the 17th ultimo, in which he fully explained to your excellency international law as generally accepted by civilized countries upon this subject.

As regards the responsibility of His Majesty's Government upon this subject there is nothing further to add to the note of the 24th ultimo, which, by order of His Majesty, I addressed to your excellency in view of the statement made by the Colombian minister that the *Ban Righ* was destined to the service of his government, and that Colombia not being at war with any other power there was no reason to prevent the vessel from leaving England. The subsequent movements of the vessel is a matter which does not concern His Majesty's Government.

I avail myself of this opportunity to reiterate to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,
Minister of Foreign Affairs.

No. 206.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, February 12, 1902.

MINISTER, SIR: The Venezuelan Government, in considering the note of the 6th in reply to a letter of the 25th of January last, addressed by this office to His Majesty's legation, finds it strange that your excellency refers to the opinions and decisions of another public minister in regard to the general case of the *Ban Righ*, as it does not seem that such can offer the slightest relation to the affair referred directly to your excellency, because, according to information received from your excellency, the vessel had sailed from ports of the United Kingdom under the English flag and provided with British documents. As regards the applicability of the doctrine of international law to the case, the Executive believes that it can only be cited on the point sustained by Venezuela in this correspondence, while it offers no opportunity for denial on the part of the legation.

Your excellency says that the free exit of the *Ban Righ* from British ports was due to official information communicated to the Government of His Majesty by the Colombian legation in London, that the vessel was destined to the service of the Government of that Republic. It appears that, in the opinion of your excellency, such act absolves Great Britain from all responsibility; but in regard to this it might be asked whether or not the fact of a steamer which leaves English ports with war materials for another country, changing her name before arriving at her destination and which opens hostilities against the government and commerce of another nation, friendly to Great Britain, using the supplies which she has aboard, constitutes a violation of the laws of the United Kingdom. In the opinion of the Venezuelan Government there would have been no grievance if it was a case of the simple shipment of a supply of arms and ammunition which arrived, without change, at their destination; but as the vessel, instead of following out her itinerary changed her status on arriving in these waters and commenced acts of hostility against a nation friendly to that from which she came, that responsibility, far from diminishing by her departure, was increased, and far from lessening the gravity of its character, it is substantiated by the preceding circumstances. The violation of British law is manifested by the mere change of name (*Libertador*), and the transgression of international law is obvious by the use of a flag during acts of hostility against a nation friendly to that

to which she belonged. Therefore, in compliance with the express commands emanating from the President of the Republic, as passed by the council of ministers, the protest of the 14th of the past month is hereby reiterated, and your excellency is informed that the Venezuelan Government will continue under the unfavorable impression, naturally produced by the omission of a debt of amity on the part of Great Britain, until some conclusion is had pursuant to an act so serious and unusual.

Your excellency will please accept the renewed assurances of my highest consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,
Resident Minister of his Britannic Majesty.

[Translation.]

BRITISH LEGATION, *Caracas, February 14, 1902.*

MINISTER, SIR: I have the honor to acknowledge receipt of a new note dated 12th instant, relative to the ship called *Ban Righ*, or *Libertador.*

I avail myself of this opportunity to reiterate to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,
Minister of Foreign Affairs.

BRITISH LEGATION, *Caracas, February 14, 1902.*

MR. MINISTER: As the subject of your excellency's note of the 7th instant and of previous correspondence is a "decided matter," I limit my note of this morning to expressing the honor of acknowledging the receipt of the former, which I will transmit to His Majesty's Government as soon as possible. Nevertheless, I think it proper to call the attention of your excellency to a statement made in that note by which it would appear that you desire to signify that the *Libertador* had committed acts of hostility against Venezuela by carrying the English flag.

The only specific "act of hostility" charged by the Venezuelan Government before His Majesty's legation, referred to the collision with the *Santa Clara*, and in the official statements, upon which your excellency bases the so-called act of piracy, and which your excellency forwarded to me in regard to this matter, I observe that the whole crew of the *Santa Clara* alleges that the *Libertador* did not carry a flag during the occurrence, but that afterwards it "raised a white flag with a blue ball in the center." It is clear, therefore (according to the testimony upon which your excellency's charge is based), that no English flag was raised during the incident nor after it occurred.

Your excellency's letters have been so courteous that I am unable to suppose that, had you been in a position to mention any other occasion upon which the *Ban Righ* or *Libertador* carried a British flag while committing what the Venezuelan Government could have, in any way, considered and represented as an act of hostility against Venezuela, you would have called my attention to the same.

I would not consider it worth while to refer to this statement if, in your previous note, of the 25th of January, you had not said that I alleged in mine of the 11th of this month that the *Ban Righ* had sailed from Martinique still carrying the English flag and provided with English papers, when what I said in that note was as follows: "Therefore, if the statement of the consul is correct, up to the first of the year, or after that date, the *Ban Righ* was in Martinique carrying the British flag and had British papers * * * of her subsequent movements I know nothing."

In my note of the 17th ultimo, I had occasion to call the attention of your excellency to an error contained in your's of the 14th ultimo, relative to the wording of my note of the 11th; and now that the aforesaid errors are being referred to, I will also call your excellency's attention to another error contained in your note of the 25th ultimo, in which you say that I said: "I must, therefore, understand that the objection of the Venezuelan Government applies to the parenthesis."

Now, then, what I did say was: "Shall I understand, etc.?" which is asking a direct question instead of making the assertion attributed to me by your excellency. I can not understand how this error could have occurred, for it only needs a very rudimentary knowledge of the English language to comprehend the difference

between the assertion "I am" and the question "Am I?"—(Debo He y Debo yo? Must I? Am I?).

I take the liberty of hoping that these frequent wrong quotations may not be made even by mistake, and that no arguments, protests, or anything else, susceptible of disturbing the propriety, if not the harmony, of the diplomatic correspondence may be based upon them.

I avail myself of this opportunity to reiterate to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,
Minister of Foreign Affairs.

No. 288.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAW.
Caracas, February 28, 1902.

MR. MINISTER, SIR: Your excellency's note of the 14th convinces the Government that all discussion, moral and legal, relative to the matter of the *Ban Righ* (*Libertador*), would be inefficacious and without result, since your excellency seems determined to establish between your own judgment and the acts charged by the Republic a connection obviously contrary to that which might be suggested or advised by the cordial friendly relations existing between England and Venezuela.

Here is the condition of affairs:

About the close of last year there sailed from waters of the United Kingdom a vessel carrying the English flag and British papers, from which a person, said to be chief of a certain revolutionary movement, declared himself in rebellion against the Venezuelan Government. The vessel being declared piratical by the National Government against which she had prepared to commit acts contrary to maritime international law, your excellency endeavored, in conference with me, to relieve her from the charge, and went so far as to say in one of your notes, that of January 3, that at that time you had warned the Venezuelan Government in the most friendly, but at the same time, most serious manner, to avoid any infraction of international law in regard to British lives and property in case of the capture of the *Ban Righ*. At the same time you declared that your Government had approved the language of your excellency in the conversation with me to which I have just referred.

Vain were the proofs which the Government presented of the obvious violation of the very British laws by the insurgent vessel; vain were its endeavors to have the same course pursued which England and herself had taken on former occasions; vain were the requests and protests presented by the Government in the name of the injured country.

As the only explanation which your excellency made in a note of January 24, after the vessel had committed depredatory acts and secretly disembarked on the shores of the Republic, armed expeditions for the purpose of inciting the war in the interior, was that the vessel sailed from English ports for the Government of Colombia. The presentation of this fact lent greater seriousness to the incident, the guilt of the ship was increased. The responsibility of the crew before the very British laws was rendered greater, and, nevertheless, your excellency, in your note of the 6th instant, in order to shift the burden from the authorities of the United Kingdom, limited yourself to saying: "That the movements of the vessel subsequent to her departure was not a matter of interest to the Government of His Majesty."

Without having changed her papers, which she could not do, and with successive change of flag, name, and course, the steamer *Ban Righ* (*Libertador*) continued her acts of depredation in the waters and on the coast of Venezuela. The so-called chief of the rebellion continued aboard, issuing proclamation of war and revolutionary communications, in one of which, published in the El Imparcial of Curazao and in other newspapers of the island, he spoke of the complete destruction of a Venezuelan vessel called *Crespo* by the guns of the rebel steamer. To this act might be added, as a fresh proof of the guilt of the *Ban Righ*, the fact of bombarding Cumarebo and causing great damage to the town.

Among the credible proofs held by the Government of the hostility exercised against the Republic by the vessel, which sailed from British ports under an English flag, are the autograph letters written on the vessel by the rebel chief—letters intended to incite and promote sedition in the interior of the Republic in simultaneous or combined action with the pirate vessel. The state of things produced by the presence of the *Ban Righ* in Venezuelan waters can not fail to affect in a very

sensitive manner the responsibility of those who placed the ship in position to reach the center of her insurrectionary operations without obstacle. To deny such responsibility, which proves itself, is, up to a certain point, equal to not recognizing the Government which invokes the power to judge of matters injurious to it, with the freedom consequent upon the possession of a perfectly defined right.

The President does not, therefore, think that such a condition should exist, and still less can he accept the opinion of your excellency that the matter has been already decided (chose jugée).

In virtue of which he has ordered me to state most respectfully to your excellency that he awaits the result of his requests in regard to the *Ban Righ*, so as to be able, free from all annoying impressions, to continue the consideration with your excellency, upon bases of mutual cordiality, the other subjects of reciprocal interest to the Venezuelan Government and the legation of Great Britain.

Your excellency will please accept the renewed protestations and assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,
Minister Resident of His Britannic Majesty.

BRITISH LEGATION, *Caracas, March 3, 1902.*

MR. MINISTER: I have the honor to acknowledge the receipt of the note of the 28th ultimo from your excellency relative to the *Ban Righ*, or *Libertador*, and to inform you that, as in the case of all your previous communications upon the subject, I will take great pleasure in forwarding the same by the first mail for the consideration of His Majesty's Government.

I avail myself of this opportunity to reiterate to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,
Minister of Foreign Relations.

BRITISH LEGATION, *Caracas, February 25, 1902.*

MR. MINISTER: His Majesty's Government having learned that the authorities of the Venezuelan Government have arbitrarily taken possession of the control and equipment of the Bolivar Railroad and that, at the risk of their lives, English subjects in the service of the company have been obliged by the authorities to render service for military purposes, I am commissioned to inform the Venezuelan Government that His Majesty's Government reserves to itself in the fullest measure all its rights in British interests and in the British subjects connected with said railroad. At the same time I must inform your excellency that it is possible that, later, a formal statement upon this subject will be made by His Majesty's Government to the Government of Venezuela.

I avail myself of this opportunity to reiterate to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,
Minister of Foreign Affairs.

No. 338.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, March 8, 1902.

SIR: I read to the President of the Republic your excellency's communication of the 25th ultimo, relative to a complaint instituted by the Bolivar Railroad plant, and I received instructions from the Chief Magistrate to inform your excellency that, as in the conclusion of the note of the 28th of the same month, No. 288, he had said that he awaited the result of his requests in regard to the *Ban Righ*, in order to be able, without any annoying impressions, to consider, upon bases of mutual cordiality, subjects which are of reciprocal interest to the Venezuelan Government and to the

legation of His Britannic Majesty, it is impossible for the executive power to undertake this matter or to proceed to its investigation during the existence of that other incident which daily becomes more serious by reason of the notorious damages which the insurgent vessel continues to inflict on the Republic and its commerce. This very day, after the damage done to the steamer *General Crespo* on the coast of Cumarebo, the vessel was found near to the island of Trinidad, attacking the coast of Guiria and the vicinity.

The situation caused by the dispatch of that vessel is plainly contrary to the spirit of true friendship and strains the existing relations between the Republic and the United Kingdom; hence the Government of Venezuela is unable, while this condition exists, to treat with propriety the other questions which your excellency submits to its consideration.

Your excellency will please accept the renewed protestations and assurances of my highest and most distinguished esteem.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,
His Britannic Majesty's Resident Minister.

No. 363.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, March 13, 1902.

SIR: To the proofs accumulated by the Government, which are daily augmented, relative to the damages sustained by the Republic from the dispatch of the *Ban Righ* from English ports, the President has decided to add proofs of the indifference manifested by the authorities of Trinidad in respect to the acts of said steamer, and the still graver charge of toleration with which they saw preparations being made in the island for armed expeditions and the public departure of the same against the Venezuelan States which are near to the colony. Your excellency will not have forgotten the earnest appeal made to the legation a short time ago, to prevent the island of Trinidad from serving as a center for plans against the public peace of Venezuela, and although there was not obtained from your excellency, nor from the new governor of the colony, all the good will which might have been expected, in accordance with international law, and which has just been voluntarily shown by another British officer (the governor of Grenada), the Government could never have supposed that the indifference to the tranquillity of a friendly country would have reached such a height in the minds of His Majesty's agents as to attract the attention of the very inhabitants of the Antillian trinity and constitute a theme of reproach in the local press of that place.

Without considering any other proofs than those which it directly possesses, the Government of the Republic finds that a vessel, proceeding from England, arrived in these waters under the British flag with materials of war, and that for more than two months it has been a constant damage to Venezuelan commerce; and that after it had destroyed national vessels and discharged cannon on open and unprotected places it received and openly shipped from the territory of that island, or, what is the same thing, from one of His Majesty's dominions, supplies of men and arms for the continuation of its work of destruction. Such a state of things is abnormal as obviously opposed to a condition of friendly relations which Venezuela cultivates with Great Britain.

As the simple application of certain laws of the Kingdom seems sufficient to prevent these damages, as well as those which relate to the acts of the steamer in her expeditions from Trinidad, the Government, taking this view and seeing that this incident has resulted in an ominous neglect of the most elementary duties of good friendship, and reserves the right to claim compensation for the damages done to the national interests through said omission.

At the same time the proposal heretofore made to defer the consideration of all reciprocal matters of importance to both countries until a situation so irregular, from the point of public law, and so contrary, above all, to the cordial spirit which governs the relations of Venezuela with the Kingdom of Great Britain, is hereby reiterated.

Your excellency will please accept the renewed assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,
Resident Minister of His Britannic Majesty.

[Translation.]

BRITISH LEGATION, *Caracas, March 14, 1902.*

SIR: I have the honor to acknowledge the receipt of your excellency's notes of the 8th and 13th instant, relative to the affair of the *Ban Righ*, or *Libertador*, and to say that I will avail myself of the first opportunity to forward them for the consideration of His Majesty's Government.

I avail myself of this opportunity to reiterate to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,
Minister of Foreign Affairs.

No. 409.]

UNITED STATES OF VENEZUELA,
DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, March 24, 1902.

SIR: I have just learned that the insurgent steamer *Ban Righ* (*Libertador*) has anchored at the Port of Spain without any opposition or difficulty whatever on the part of the colonial authorities. Venezuela protested at the time to the honorable legation against the acts of hostility committed against the Government by the said vessel on the coast of the Republic, to the detriment of general security. Later it protested against the attitude of indifference or toleration assumed by the governor of Trinidad in the presence of revolutionary movements openly prepared in the territory of the island against the constitutionally established authorities of the Estados del Oriente. Herewith, in conformity with a special charge from the Constitutional President of the Republic, I present in this note, with all the energy demanded by the case, a new protest against the unusual act of the colonial authorities, who, after the proceedings had before this respectable legation, harbored said steamer without taking into consideration, to judge from the development of affairs, the aforesaid proceedings.

With the earnest request that you will please take cognizance of this new protest from the Government of the Republic, and of the grave circumstances which occasion it, I offer to your excellency new assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,
Minister Resident of His Britannic Majesty.

[Translation.]

BRITISH LEGATION, *Caracas, March 25, 1902.*

SIR: I have the honor to acknowledge the receipt of your excellency's note, dated yesterday, in which protest is made against the presence in Port of Spain of the insurgent steamer *Ban Righ* (*Libertador*), without any objection being made on the part of the colonial authorities.

I communicated this matter to His Majesty's Government without delay.

I avail myself of this opportunity to reiterate to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,
Minister of Foreign Affairs.

[Translation.]

BRITISH LEGATION, *Caracas, March 25, 1902.*

SIR: In reference to your excellency's note dated yesterday, I have the honor to inform the Venezuelan Government that the governor of Trinidad has informed me that on the 23d instant the Colombian warship *Bolivar* arrived at Port of Spain before the *Ban Righ*.

I avail myself of this opportunity to reiterate to your excellency the assurance of my highest esteem.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,
Minister of Foreign Affairs

[Translation.]

BRITISH LEGATION, *Caracas, March 20, 1902.*

SIR: In the note from your excellency of the 13th instant you spoke of the "toleration with which the governor of Trinidad had witnessed the preparations for armed expeditions in the island, and the public and notorious departure of the same to operate against the peace of the Venezuelan States which are near to the colony.

I observe, also, that your excellency speaks, in your note of the 24th instant, of having protested against the "indifference or toleration shown by the governor of Trinidad toward the revolutionary movements notoriously prepared on the island to operate against the constitutionally established authorities of the Estados Orientales."

The only testimony presented by your excellency in support of these general but serious charges is that of some communication contained in the local press. Unfortunately the liberty of the press is no guarantee of its correctness, as this case has proved, and it will be as satisfactory to the Venezuelan Government to know, as it is to me to communicate to it, that I have received from his excellency, the governor of Trinidad, a dispatch in which he informs me that there does not appear to be any foundation whatever for the statements made in the local press to which, apparently, your excellency alludes.

It also seems from the reports transmitted to this office that the police had received instructions to keep a watch upon all places frequented by Venezuelans and to report to his excellency, who has been on the alert; and that the revenue police also patrol between 6 p. m. and 6 a. m., and that, so far as they know, *no armed party* has left Trinidad for Venezuela or for any other place.

His excellency also informs me that he has received no communication whatever from the Venezuelan consul upon the subject.

I avail myself of the opportunity to reiterate to your excellency the assurance of my highest esteem.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,
Minister of Foreign Affairs.

[Translation.]

BRITISH LEGATION, *Caracas, March 27, 1902.*

SIR: In my note of the 24th instant I had the honor to inform your excellency that I had communicated without delay to His Majesty's Government the protest of the Venezuelan Government to the presence in Port of Spain of the insurgent steamer *Ban Righ* (*Libertador*), without any objection having been made by the colonial authorities.

I am now instructed by His Majesty's Government to inform that of Venezuela, that as it now appears the said vessel is at present, at least ostensibly, a Colombian warship, carrying the Colombian national flag, he can not with propriety order any proceedings whatever against her.

Such procedure would constitute an act of war against Colombia if the vessel is a Colombian public vessel.

It is my duty to state that His Majesty's Government is not responsible for any act of depredation committed by the said vessel. Besides, the circumstances under which she was allowed to sail from England are of such a nature that the Venezuelan Government can not properly bring any charges of neglect whatever.

If, since her cruise to Martinique, she has made use of the British flag, it has been simply an unjustifiable act for which the Government of His Majesty is in no way responsible.

On the other hand, His Majesty's Government would not allow the vessel to make use of any British port as a base of hostile operations against Venezuela, and the

governor of Trinidad has been so instructed that he will not permit her to coal and has requested her to leave the port at once.

I avail myself of this opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,
Minister of Foreign Affairs.

No. 416.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, March 29, 1902.

SIR: On the 25th instant your excellency notified this office that you had received notice from the governor of Trinidad of the arrival in Port of Spain of the ship *Ban Righ* as a Colombian warship by the name of *Bolivar*. On the 27th your excellency addressed to me another note upon the same subject; but in order to take the matter under consideration it is necessary for the Venezuelan Government to know under what process and from what date the aforesaid English ship entered the Colombian navy.

I most earnestly beg that your excellency will promptly furnish this information, and meantime I have the honor to offer the renewed professions of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,
Resident Minister of His Britannic Majesty.

[Translation.]

BRITISH LEGATION, *Caracas, March 31, 1902.*

SIR: In your excellency's note of the 29th instant you asked by what process and since what date the vessel alluded to in your note entered the Colombian service.

In my note of March 27 I stated that "I had been instructed by His Majesty's Government to inform the Venezuelan Government that said vessel now appears, ostensibly at least, to be a Colombian war ship."

I have the honor to inform your excellency that I have no further information upon the subject than that which has been communicated to the Venezuelan Government.

I avail myself of this opportunity to reiterate to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,
Minister of Foreign Affairs.

No. 450.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, April 5, 1902.

SIR: Since the statement made by you on January 3 last, in your own and in the name of your Government, that the vessel (carrying an English flag and provided with British papers) declared by Venezuela to be outside of international maritime law, up to the receipt of your note of March 27, in which, in accordance with instructions also emanating from London, you stated that the said vessel was a Colombian warship, against which it was impossible for Great Britain to adopt any proceedings whatever, the agents of the Kingdom had shown so little interest in appreciating the justice of Venezuela's rights, and such a tendency to shirk the responsibility, natural in similar circumstances, as almost to raise the presumption of the preexistence of a judgment not altogether impartial and entailing consequences of a grave and painful nature, affecting the mutual duties of nations. In order to prove this irregularity it is sufficient to refer to the correspondence with your legation during the three last months.

The note of the 3d of January, referred to, was followed by one of the 5th, in which your excellency gave assurance that your Government would proceed in the

matter in accordance with the regulations of British and international law. In the reply made by this office to both communications, there was expressed the natural surprise produced by the fact of finding an English vessel engaged in hostile operations against the Republic, to which was added a written proof that in 1882 His Majesty's Government, through Lord Granville, had assented to the course pursued by Venezuela under exactly similar circumstances to those which have just occasioned the decree relative to the *Ban Righ* or (*Libertador*). The damages done by the aforesaid British vessel caused the Government, on the 14th of January last, to make its first protest against the unusual fact of a vessel sailing from English waters for the purpose of injuring the Republic; at the time that the protest was made proofs were sent to the legation of an attack made by the vessel on a Venezuelan sloop with other proofs of irregularity of her change of name and flag.

In the note prior to that from this department, which was received too late, your legation had endeavored to explain the condition, antejudicial, under which the *Ban Righ* openly sailed, and even proofs were requested, in order to transmit them to your Government, to show that the vessel was committing acts contrary to international maritime law. In referring, afterwards, to the protest made by Venezuela, your excellency denied, in a note of the 17th, that you had said that the vessel had been dispatched from English ports; that her possession of British flag and papers, and her equipment and dispatch were, in your opinion, two different things. To that note and to the previous one this department replied on the 25th, confirming all its assertions, fully sustained by the doctrine of international law upon the subject; in one respect this affirmation was unnecessary, as your excellency had already stated that the vessel had left England last November bound for the Colombian Government. On February 6, your excellency reiterated said information and added that the acts of the *Ban Righ* subsequent to her leaving British waters, did not concern His Majesty's Government.

In the reply made to your excellency on the 12th, all the preceding circumstances were recapitulated (the sailing of the vessel under an English flag and with British papers, the illegal change of name and destination, the hostilities in which she engaged against a nation friendly to Great Britain, and other no less serious acts), in order to reiterate the protest of the 14th of January, and to put in evidence the unpleasant impression which the attitude assumed by Great Britain had made on the Venezuelan Government. Your excellency replied by a simple acknowledgment, without even announcing the transmittal of the communication to the Government of His Majesty; afterwards, in a note of the 14th, after some explanations relative to the literal meaning of one of your phrases, which you considered badly translated, you took for granted the judgment (chose jugée) of the case under investigation, and called attention to the fact that the vessel had raised an unknown, and not a British flag, after boarding the Venezuelan sloop, which you found to be the only definite act of hostility of which the vessel had been accused.

Another recapitulation had to be made to the legation on February 28, without omitting among the acts the *Ban Righ*, her secret shipment of armed expeditions for the purpose of inflaming the war in the interior of the Republic. And as at this time your excellency had, in a tone almost threatening, made complaint of the alleged use of a certain railroad belonging to an English company, for the mobilization of military equipments. The President, in a note of March 8, at once declared a suspension or delay in the consideration of all matters of mutual concern to both governments, while the unusual situation created by the dispatch of the *Ban Righ* and the hostile acts of the said vessel continued to exist, although the situation was so serious the British Government had only lent it a very lukewarm or meager interest. The subsequent conduct of the authorities of Trinidad, so propitious to the operations of the vessel, sas well as to the plans in which she became the principal factor or medium, obliged the Government to make new protests only answered finally in the ambiguous form which appears in your excellency's note of the 27th of last March.

Very little thought is needed upon the foregoing recapitulation in order to deduce the vacillation or lukewarmness with which the British Government and its representatives conducted this delicate matter, which might almost be interpreted in a spirit contrary to friendly obligations and the rights of the State as maintained by Venezuela, while it can not for a moment be credited that the English authorities did not recognize the vulnerable motives of the *Ban Righ*, as she sailed from waters of the United Kingdom and took aboard materials of war.

The nationality of a vessel is estimated and defined according to the circumstances to which she is subjected and the proofs which the vessel is obliged to present. The ships of the State is one case, and those belonging to individuals only engaged in commerce, another. In speaking of this subject, relative to British legislation, Cabro

(sec. 393) mentions that the owner of an English vessel must be a subject of the United Kingdom, by birth or naturalization, or must have secured special authority and done homage to the Crown. The person who acquires ownership of the vessel is obliged to make declarations similar to those exacted from the first owner.

All vessels must have a name, which, according to all writers, is the best way of designating her, following her, and engaging her under certain conditions. Once she has been named no change is admissible. Pradier Fodéré, in making the foregoing statement, explains that in England and in France any change of name is absolutely prohibited (2287). This is not the case in Austria-Hungary, nor in Norway, where there are exceptions to the rule. According to Venezuelan law, if the owner of a vessel decides to change her name he must take out a license just the same as when the shape of the vessel is changed, with the difference that in the latter case new measurements, new certificates, and new securities are required.

The British Government might follow two opinions in judging the case of the *Ban Righ* as a vessel sailing from its ports—the opinion of domestic law and that of international law. According to the former the sudden change of name was sufficient to render the condition of the vessel illegal; under the latter enough reason might have been found in the attitude assumed by the steamer on her arrival in these waters to render her liable to pursuit and capture for violation of the principles of maritime law, to the observance and compliance of which all nations are obliged.

According to Ortolan (Teodoro), the sea is a theater so vast and difficult to subject to supervision or place under a sufficient number of police to guarantee life, property, and common rights, that it is not too much to demand, in order to obtain such security, that each vessel should be under some special nation. Such nation might be more or less barbarous or civilized, more or less a stranger to international relations and the cultivation of the same; but if they do not follow common and human law, they must be made to follow some law. And if the nation to which the vessel belongs, or is connected, is an organized State, knowing and practicing the rights of man, its authority and the guarantee of its public officers constitute elements of security, and therefore the vessel is placed under the rights of man, according to the regulations observed by the State to which she belongs. (Book II, Chap. IX.)

If the *Ban Righ* opened hostilities against Venezuela while carrying the British flag, the duty of England seems to be well defined by the circumstances of the act and the time of its accomplishment. If later she raised a flag unknown to anyone, she violated international law and the consequent punishment. The vessel being consigned to Colombia did not relieve Great Britian from subsequent responsibility, unless the possibility is admitted of one country arming a vessel with her own flag and license for the military service of another government without requiring any explanations as to her ultimate operations against a nation in friendship with that which had equipped the vessel for sailing. Had the *Ban Righ* sailed from English waters under the official name and flag of Colombia, as the vessels which Balmaceda's Government bought sailed under the flag and name of Chile in 1891, and endeavored to impede the representatives of the junta of Iquique, there might be, perhaps, some opportunity for argument; but as the steamer was provided with the papers and flag of Great Britain the responsibility of the government that fitted her out officially for her voyage must obtain as to the vessel, especially if, through her illegal change of flag and name, there resulted serious damages to another State, or evident violations of the provisions of public law. The change of route and of destination constituted another proof of culpability.

To use the flag of a foreign country without its authority to do so, is, and has always been held by the rights of man, to be a fraudulent act, deserving of punishment, as well by the country whose flag has been used, as by any other country. In the case of the *Ban Righ* there would have been nothing criminal in such act until after her arrival at Port Amberes or at Fort de France, as the action of the British Government was equally provided for and defined. If the vessel now carries the Colombian flag, Great Britain might be able to explain how it passed into the possession of another country, causing, from the time of its arrival in the Antilles, such serious and extraordinary damages to Venezuela.

The colony of Trinidad has contributed to augment this situation by the easy manner in which vessels, destined to supply the insurgent ship, enter and leave the port, as was done by the schooner *Aguila de Oro*, and by the departure from the island of armed expeditions for the eastern coast of the Republic.

Although these expeditions ferment a perturbing nucleus and are recognized by the colonial authority as belligerent rights, against all valid antecedents and to the discredit of the most rudimentary principles of the rights of man, it must still be supposed that in their toleration the magistrates of Trinidad completely forgot the

regulations upon which neutrality is founded and the evident violation of legislation passed by Great Britain upon this question.

In 1877 the foreign enlistment of 1870 was, as now, in force; it was an extension and modification of the act of 1819; the British Government on opening the Russo-Turkish war (Crimean) nevertheless believed it her duty to publish a new act (London Gazette, April 30) to expressly prevent the enlistment of soldiers in her territory and to prohibit the use of her waters as a base for warlike operations. Later, during the war in Tonkin, the cabinet of St. James declared coal contraband of war, and yet that precedent has not been used by the neighboring colony who allows coal to be supplied to a vessel which, far from being belligerent, has been declared beyond the terms of international law by the Government of a nation friendly to England.

The famous Bluntschli says that vessels armed as corsairs to destroy the ships of foreign nations, devastate the coasts of the State to which they belong, and enter the country by fire and bloodshed, not so much with the intention of making an advantageous expedition, but to satisfy their spite and vengeance (sec. 343) must also be considered pirates.

The destruction of the ship *Crespo* and the bombardment of Cumarebo, de Guiria, de Carúpano, de Juan Griego, de Porlamar, and of other ports of the Republic might have served the British authorities sufficiently to have confirmed the official opinion of the Venezuelan Government for them to have acted in accordance therewith.

In your note of the 27th of March, your excellency stated that on the occasion of the vessel having anchored in Port of Spain she was, ostensibly at least, a Colombian warship, and that any proceedings against her would constitute a bellicose act against Colombia. Your excellency limited your reply of the 31st to the reproduction of the ostensible condition to the great surprise of the Government, as the real condition of the vessel could not be unknown to the British authorities, as none is in a better position than the Government of His Majesty to know whether the English vessel, dispatched from his ports by his employees in the branch of the commercial, marine, or navy department really transferred to a foreign navy, and how it was done. And as your excellency added that you had given orders not to permit the steamer to coal in Port of Spain nor to remain there, it may be asked if Colombia, as is well known, is not at war with any nation, and the ships legally belonging to her navy may, therefore, have access to all ports of supply, against whom is the order directed?

If not against Colombia, why then argue of the difficulty in proceeding against a steamer evidently under illegal conditions? In order to measure the legal extent and international significance of the first statement in the note of the 27th, it would be necessary to determine the circumstances of the second.

Still further: It is well known that the said steamer committed, during the early part of March, piratical acts in English waters against a merchant vessel dispatched from Trinidad to Ciudad Bolivar. One of the principal newspapers of the colony called the attention of the governor to this matter although the vessel was only able to continue her voyage after a delay of from eight to ten hours through orders from the chief of the rebels, a circumstance which might be considered mortifying to a grave and circumspect colonial authority said to be friendly to Venezuela.

The reciprocity regulations established by England and the United States in article 6 of the treaty of Washington, in 1871, makes it obligatory to employ all measures to prevent, in the ports, the equipment and armament of any vessel which might be thought destined to hostile operations against a friendly power, and to employ the same measures to prevent the sailing of any vessel called to take part in said operations, if they had been prepared wholly or in part for war purposes within the respective jurisdiction. The essential idea of said regulations was published by the Institute of International Law in the session at The Hague (1875), and there is hardly a nation that fails to observe these regulations as worthy of general respect and universal application.

The United States offers, on its part, in section 5283, Revised Statutes, the regulation that any person within the territory who equips or arms or attempts to equip and arm any vessel destined for hostilities against a foreign prince or State, or against any colony, district, or city with which the United States is at peace, will be considered guilty and punished by fine or imprisonment as shall be determined.

Viewed impartially by a calm mind, whether intrinsically or outwardly, the public acts of the *Ban Righ* which have occurred from the time of her clearance to her recent arrival in Port of Spain, as well as the facilities in Trinidad, upon which the insurgent Venezuelans counted for carrying out their plans and operations, must point to two circumstances, the most serious and extraordinary being that Great Britain bases her opinion of her irresponsibility upon the assertions of the official minister of a third State; and the Government of His Majesty, or his representatives, holding a mere revolutionary nucleus, without headquarters or flag, in a superior

condition to that of a nation recognized as belligerent. The first is a detriment to international harmony, for nothing would be easier than to charter war vessels in any country to disturb the seas, under the pretext that they were destined to the military service of a constitutional government. The second is equal, in a certain way, to legalizing the action of any band sworn to attack the institutions of a country and the authority representing them. These two circumstances have engendered, upon this occasion, great injury to the Republic of Venezuela, the effects of which have extended to the commerce and industries in all spheres of public wealth and private property. It is sufficient to mention the loss of one of the best vessels of the national navy, the destruction of buildings, both private and municipal, in unfortified ports by the *Ban Righ*, the money expended in the mobilization of the troops to garrison the places attacked and to repel the insurgents, the present instability of the Government funds and consequent depreciation of public bonds, the loss of the crops, the destruction of fruit trees, and the cumulation of resulting difficulties which have overwhelmed Venezuela from the sailing of the vessel from British ports, with papers from the United Kingdom and an English flag, to her arrival in these waters, in unsettled condition, when she found a center of supplies and military resources in one of His Majesty's colonies, near to the Republic.

It is proper to mention here, in corroboration of the partial spirit shown latterly by the authorities of said colony, that while the *Ban Righ* found port and harbor, free from all encumbrances in the waters of Trinidad, the Venezuelan warship *Bolivar* had neither access nor entry on account of a sudden quarantine—as if to put in a measure difficulties in the way of her watchfulness.

It is also the time to express the surprise to which the assertion transmitted by your excellency in the note of March 29 has given rise, that the governor of Trinidad had not received any communication from the consul of Venezuela relative to the revolutionary operations of which that island is the center. In the document, which this department has compiled with regard to this grave matter, will be seen a protest made by Mr. Charles Benito Figueredo, consular agent of Venezuela in Port of Spain, on the 6th of March, to the governor on account of the liberty enjoyed by the insurgent ship and the immunity which enabled her to carry out her numerous plans on the soil of the island to conspire against the peace of this territory.

There is also proof of the protests previously made to the governor by the official agent of the Republic relative to the new acts which have occurred on the island against the tranquillity and the institutions of Venezuela. I inclose copy of the same.

The foregoing confirms the ample justice which the Venezuelan Government has for claiming, as it will do at the proper time, the compensation for the damages and injuries occasioned by the steamship *Ban Righ* and augmented by the manifest partiality shown by the neighboring colony.

Meantime, in accordance with the express orders of the constitutional President of the Republic, decided in the council of ministers, the contents of the note of March 13, No. 363, is hereby reiterated.

I renew to your excellency the assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,
Minister Resident of His Britannic Majesty.

[Translation.]

BRITISH LEGATION, *Caracas, April 8, 1902.*

SIR: I have the honor to acknowledge the receipt of your excellency's communication of the 5th instant, expressing the view taken by the Venezuelan Government in regard to the *Ban Righ*, or *Libertador*, and the various questions connected with said vessel which refer to the relations between Trinidad and Venezuela.

I will avail myself of the first opportunity to forward this note for the consideration of His Majesty's Government.

At the same time I have the pleasure to inform you that the friendly intentions of His Majesty's Government towards Venezuela—shown by the order given to the said vessel to leave Port of Spain immediately after it was known that she had entered the port—having been frustrated from the fact that said vessel was completely unrigged, I have just received from the Marquis of Lansdowne, first secretary of state to His Majesty in the office of foreign affairs, notice that His Majesty's Government had instructed His Majesty's minister in Bogota that, unless satisfactory assurances were

given, in the first place, that the said vessel is the property of Colombia, and, in the second place, that it will not be allowed to take part in the illegal hostilities against Venezuela, in which she is said to have been engaged, she will not be permitted to repair and be made seaworthy.

I have also the pleasure to communicate to your excellency that the Colombian consul in Port of Spain, having requested permission to transfer, presumably from the vessel referred to, 5,000 rifles and 3,000,000 bullets to one of the Liverpool line of steamers for the transportation to Carthagena, the governor of Trinidad will be instructed (he has doubtless received the notice by this time) that such permit can not be conceded.

I avail myself of this opportunity to renew to your excellency the assurances of my highest esteem.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,
Minister of Foreign Affairs.

[Translation.]

The English minister presents his compliments to the minister of foreign affairs, and has the honor to request that he have inserted, at the conclusion of the note of this date relative to the *Ban Righ* or *Libertador*—after the word conceded—a new paragraph, as follows:

"It will be necessary to await the result of the communications with the Colombian Government."

This paragraph will then be the end of that note. It was a part of the instructions received from His Majesty's Government, but was accidentally omitted in the copy.

W. H. D. Haggard avails himself of this opportunity to reiterate to His Excellency Gen. J. R. Pachano the assurances of his highest esteem.

Caracas, April 8, 1902.

His Excellency Gen. J. R. PACHANO,
Minister of Foreign Affairs.

No. 483.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, April 11, 1902.

SIR: I have the honor to advise your excellency of the receipt by this department of the two notes of the 8th instant from your legation, and I avail myself of this opportunity to renew to your excellency the profession of assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,
Minister Resident of His Britannic Majesty.

No. 539.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAW,
Caracas, April 24, 1902.

SIR: By order of the constitutional President of the Republic, in relation to the subject-matter of the two notes from your legation of the 8th instant, I have to inform your excellency, by virtue of knowledge which has come direct to the Government, that the arms and ammunition held on board of the revolutionary steamer were nearly all removed and forwarded in clandestine manner to the Venezuelan coast. As proof of so grave an act is the fact that a great many of the said arms and ammunition were captured in the flight which followed the occupation and pacification of Guaira by the national troops.

The President desires that His Majesty's legation should take note of this circumstance for the purposes expressed by the Government in the course of the correspondence relative to the *Ban Righ*.

Your excellency will please accept the renewed professions and assurances of my highest and most distinguished consideration.

MANUEL FOMBONA PALACIO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,
Minister Resident of His Britannic Majesty.

[Translation.]

BRITISH LEGATION, *Caracas, May 23, 1902.*

SIR: Without delay I transmitted to the governor of Trinidad the note from Dr. Fombona Palacio, of the 24th of April, which stated that "the greater part of the arms and ammunition which was aboard the revolutionary vessel—presumably the *Ban Righ* or *Libertador*—had been removed and clandestinely forwarded to the Venezuelan coast," and as proof of the same the fact that "some arms taken in the fight which resulted in the occupation and pacification of Guaira by the national troops."

I have the honor to inclose copy of the reply of his excellency by which it will be seen that the arms and ammunition referred to are still aboard of the said vessel.

I avail myself of this opportunity to reiterate to your excellency the assurances of my highest esteem.

W. H. D. HAGGARD.

His Excellency Gen. DIEGO B. FERRER,
Minister of Foreign Affairs.

[Translation.]

TRINIDAD, GOVERNMENT HOUSE, *May 14, 1902.*

SIR: I have the honor to acknowledge the receipt of your letter of the 28th ultimo, transmitting copy of a note from the Venezuelan Government in which it is stated that the arms, etc., from the *Ban Righ* had been removed clandestinely.

Upon receipt of your letter I instructed the customs collector to request permission of the Colombian consul to inspect the hold of the *Ban Righ*. This permission was immediately granted and the inspection having been made it was found that the arms and ammunition are still on the *Ban Righ*.

I have, etc.,

ALFRED MOLONEY, *Governor.*

His Excellency Mr. W. H. D. HAGGARD,
Resident Minister of His Britannic Majesty.

[Translation.]

BRITISH LEGATION, *Caracas, July 4, 1902.*

SIR: In my note of April 8, I had the honor to inform the predecessor of your excellency of the friendly intentions of the Government of His Majesty toward Venezuela relative to the *Ban Righ*. These are in brief, unless the Government of Colombia should give security that—

First. That the vessel in question is a public vessel of Colombia; and

Second. That in the future it shall not be permitted to take part in any hostile action against Venezuela, that it shall not be allowed to be repaired at Puerto España, and in a verbal note dated the following day I added that it would be necessary to await the results of the communications addressed to the Colombian Government.

I have the honor to advise your excellency that I have learned from the Marquis of Lansdowne, secretary of state for His Majesty in the office of foreign affairs, that the result of those communications is that the Government of His Majesty has received satisfactory assurances from the Colombian Government, first, that the *Ban Righ* belongs to Colombia, and in the second place, that as long as a war does not exist between Venezuela and Colombia the use of said vessel will not be authorized to commit hostile acts against this country.

I have also been advised by His Excellency that orders have been issued for the vessel to proceed to Colombian waters and be stationed there, and that instructions have been given to the governor of Trinidad to allow said vessel to be repaired at Puerto Espana and then to proceed to those waters.

I take this opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. DIEGO B. FERRER,
Secretary of Foreign Relations.

No. 935.]

DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAWS,
Caracas, July 16, 1902.

SIR: In the communication which your excellency directed on the 4th instant to General Ferrer, there was transmitted to the Government of Venezuela by direction of His Majesty, the result of a report relative to the vessel *Ban Righ* which your excellency had promised this department on the 8th of April. The Vice-President in the exercise of the executive power has made note of the ample assurances now given by the Government of His Majesty relative to said steamer; but while said reports do not change the opinion which the Government of Venezuela has held from the beginning relative to the status of said vessel, and which now moves the Government to protest solemnly against the recognition of said vessel by Great Britain, as though treating of a vessel not placed beyond the pale of international law.

Neither can the aforementioned assurances limit or diminish in the least the rights advanced by Venezuela by reason of former circumstances, from the departure of the *Ban Righ* from English ports, with a British flag and British papers till the consummation by said vessel, now declared a pirate, of acts directly prejudicial to the commerce, the peace and general interests of the Republic.

Accept, your excellency, the renewed assurances of my highest and most distinguished consideration.

R. LOPEZ BARALT.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,
Resident Minister of His Britannic Majesty.

[Translation.]

BRITISH LEGATION, *Caracas, July 30, 1902.*

SIR: I have the honor to advise your excellency that I have been informed by the Government of His Majesty that it has seriously considered a series of cases in which the Venezuelan Government has prejudiced the property and liberty of British subjects in an absolutely unjustifiable manner.

It enumerates the following cases which have occurred since the beginning of last year:

That of the capture and deportation by the Venzuelan gunboat *Augusto* of British subjects; that of the capture of the boat and property of John Craig, on the island of Patos; the case of the *Buena Fe*, which involved a similar injury and a violation of territory; that of *La Maria Teresa*, that of the *Pastor*, that of *La Indiana*, and that of the *In Time*.

None of these cases have been satisfactorily explained.

The confiscation of the British bark *Queen* seems to the Government of His Majesty the most flagrant case.

The Government of His Majesty finds it impossible to tolerate the continuation of a course of conduct which, in the incident last mentioned, reached the limit, and therefore has given me instructions to present a formal protest relative thereto, and to indicate to His Excellency the President, and to the secretary of foreign affairs in terms, with respect to which there can be no doubt, that unless the Government of His Majesty receives explicit assurances that such incidents shall not recur, and that unless there be paid promptly full compensation to the persons prejudiced wherever it is shown to the satisfaction of the Government of His Majesty that such compensation is justly due, it will take such steps as it may consider necessary in order to demand the reparation which it has the right to demand in those cases, as well as the claims of the British railway companies of Venezuela for any loss sustained by the conduct of the Venezuelan consul at Trinidad, for which there is no possible justification.

I embrace this opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Dr. R. LOPEZ BARALT,
Secretary of Foreign Affairs.

No. 977.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAWS,
Caracas, ——, ——.

SIR: The note of your excellency, dated July 30, which I received the 1st of the present month, contains in brief the complaints and claims relative to a number of subjects, many of which, as per example, the capture of the boat of John Craig and the proceedings against the sloop *Maria Teresa*, was considered by the Government of the Republic as entirely closed. Another of those questions, that relating to the little isle of Patos, has been for some time defined by Venezuela without any judicial argument on the part of Great Britain; and the other questions have already been explained or are being explained, even though the reply to them has been delayed by force of circumstances, so it is unnecessary to go over them again, as the legation of His Majesty is well acquainted therewith. Therefore the Chief of the executive power is surprised at the manner in which your excellency sets forth those facts, as well the general character of the note; but without considering it a proper time, and notwithstanding all the objections which are suggested against it, the Government has decided to reply thereto immediately, in view of the reply given to the questions of that or of a similar character, and because of the losses occasioned by the *Ban Righ* and the partiality shown by the authorities of Trinidad in their action against the peace of Venezuela.

The surprise of the Chief of the Government is all the more justifiable by the fact that there is now brought into the discussion questions of various kinds, some already decided, and at a time when the legation could not consider it proper to investigate pending questions, as the complaints and claims presented to Great Britain on account of said vessel and the attitude assumed by the authorities at Trinidad are still unsettled. Your excellency knows that the arguments of Venezuela in this matter consists of evidence on file in the archives of this department; you know, also, according to the notes dated February 28, March 8 and 13, and April 5, that since then the treatment of the other questions with the legation were deferred, and attention was directed to the prompt solution of the former question in order to preserve friendly relations with the Government of His Britannic Majesty so earnestly desired by the Government of Venezuela.

This is therefore the opportunity to remind your excellency again that until the question of such great importance to the interests of both nations is satisfactorily decided this department can not take up other subjects entirely foreign thereto.

The conduct which in the note is attributed to the consul in Trinidad is a matter which may be considered as related to the partiality of the colonial authorities.

Accept, your excellency, the renewed assurances of my highest and most distinguished consideration.

R. LOPEZ BARALT.

His Excellency WILLIAM HENRY DOVETON HAGGARD,
Resident Minister, His Britannic Majesty.

[Translation.]

BRITISH LEGATION, *Caracas, August 21, 1902.*

SIR: At various times your excellency has said, and I have been informed that the Venezuelan Government has constantly asserted, that the arms and munitions remaining in the *Ban Righ*, or *Bolivar*, in Puerto Espana, had been taken from the vessel and transported to the mainland for the use of the revolution.

Your excellency knows from an official communication dated April 24, in which your predecessor stated that the greater part of those munitions had been taken from the vessel for that purpose; that the governor of Trinidad, with the permission of the consul of Colombia, made an examination which showed that the arms and munitions which the Venezuelan Government asserted had been taken to Venezuela were found on board.

The governor *ad interim* of the colony, with the consent of the Colombian consul, has now made another official examination to the collector of customs and reports that he also found on board a large stock of arms and munitions.

Your excellency should remember that, as stated by the collector of customs in his report, it is well known that the sources of supply for the revolution have been many.

He states, for example, that during the last three months the revolution has received both arms and munitions from Germany, through a Colombian port.

He mentions other sources of supplies with which your excellency is doubtless acquainted.

I take this opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Dr. LOPEZ BARALT,
Secretary of Foreign Relations.

No. 1058.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAWS,
Caracas, August 27, 1902.

SIR: The note of your excellency of the 21st having been considered by the Government, it finds that the reports of the administration of Trinidad relative to the arms carried by the vessel *Ban Righ* can not cause to disappear and much less destroy the basis of the claims and complaints of Venezuela, because to the evidence of deeds performed can not be opposed either in this, or in another like case, circumstances which occurred later. In order to strengthen such evidence it may not be out of place to mention incidentally, as a new argument, what the English captain, Willis, the seditious captain of the *Ban Righ*, said when the vessel was dispatched from British ports, a statement not yet denied and which appeared in a London paper, The Daily News, published the 7th of last July. The captain stated in that paper that the cargo carried by the steamer consisted of 175 tons of Mausers, 180 tons of munitions, a large number of pieces of artillery and campaign carts; which is very far from being the small amount which seems to be referred to in the last report of the acting governor of the colony.

With reference to the supply of arms which came from Germany, the Government considers that this is a mistake, as it is well known that the revolutionary supplies both in the beginning, as well as during these last months, have entered the Republic through the coasts adjacent to Trinidad and not through other avenues.

From the above it must be assumed that the Government finds it impossible to attribute to the report now communicated by your excellency any force contrary to the declaration made to your excellency in my note of the 16th ultimo, No. 935, which the Government hereby confirms and reproduces in all its parts.

The note of my predecessor, dated April 24, stated that the arms and munitions guarded on board the revolutionary steamer had for the most part been taken and dispatched in a clandestine manner for the coasts of Venezuela.

The report of the acting governor states that the collector of customs now finds on board of the *Ban Righ* a large quantity of arms and munitions. The existence of the latter does not exclude the former fact nor nullify the deductions that are logical or natural.

I inclose herewith for your excellency a copy of the Venezuelan Herald, in which is reproduced in Spanish the account attributed to Captain Willis by the London newspaper.

Please accept, your excellency, the renewed assurances of my highest and most distinguished consideration.

R. LOPEZ BARALT.

His Excellency WILLIAM HENRY DOVETON HAGGARD,
Minister Resident of His Britannic Majesty.

No. 1255.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAWS,
Los Teques, October 27, 1902.

SIR: The government of the Republic has been careful to report fully to the British legation ever since last January, for the information of the Government of His Britannic Majesty, all the injury caused to the country by the expeditions and acts of the *Ban Righ* and by the conduct observed by the authorities of Trinidad with reference to the revolutionary events of which Venezuela has been the bloody theater, and does not wish to allow to pass without the necessary statement or the corresponding protest the recent fact of the post-office of that island having forwarded on the 7th of the present October in a foreign war vessel several sacks of mail to the Ciudad Bolívar, a place occupied by groups of rebels against the constitutional power. The forwarding of mail, through means foreign to those provided or established by the convention at Washington, June 15, 1897, was an act in violation of the Universal Postal

Union, of which that colony formed a part, and the forwarding of said mail to a place in rebellion against the constitutional government of an adjacent country (a place furthermore included within the blockading lines) might even signify the purpose of facilitating communication with the revolutionary center, and thus render more difficult the repressive action which the agents of the law might exercise for the purpose of restoring peace.

The protest, which in view of this unexpected fact was presented on the 15th of the current month by the consul of Venezuela to the honorable colonial secretary, is confirmed by the present note, in which at the same time the Government desires to leave on record that the action of the postal authorities of Trinidad becomes a new and very serious proof of the facilities with which the Venezuelan insurgents have there found for their operations.

Not only in conditions created by a domestic sedition, like that of the Ciudad Bolívar, but in formal wars between belligerents, the transportation of documents directed to one of the contending parties is considered unfortunate and entirely inadmissible; and the British legation is well acquainted with the order issued by the English Government, March 28, 1854, in view of the eastern war, in which correspondence with the enemy is placed among the articles whose transportation is prohibited by neutrals. Therefore, the Government considers it doubly contrary to the principles of law and the rule of national comity, the action of the postal authorities of the British colony; and upon protesting against the above, the Government desires to add said protest to all other actions that influenced Venezuela to set forth the claims mentioned in the final paragraph of the note addressed to the British legation under date of April 5 last, and bearing No. 450.

Accept, your excellency, the renewed assurance of my highest and most distinguished consideration.

R. LOPEZ BARALT.

His Excellency WILLIAM HENRY DOVETON HAGGARD,
Resident Minister of His Britannic Majesty.

No. 1369.] DEPARTMENT OF FOREIGN AFFAIRS,
OFFICE OF FOREIGN PUBLIC LAWS,
Caracas, November 24, 1902.

SIR: The document containing the complaints and claims of Venezuela prepared as a result of the action of the *Ban Righ* and of the attitude assumed by the authorities of Trinidad ever since the peace of the eastern markets of the Republic has been disturbed, has just been added to by an action of grave injury in view of its varied and transcendental importance. I refer to an official forwarding announced on the 12th instant by the post-office of Trinidad of mail for the Ciudad Bolivar, on the English war vessel *Fantome*, an action by which the post-office department of the colony in addition to violating the most elemental principles of law and the best-known rules of national comity, for it thus established direct communication between the island and a place occupied by revolutionists against which was operating the military force of the Government, it has compromised a vessel of the navy of His Majesty in an action clearly in violation of the Postal Convention of Washington of 1897, duly ratified both by Venezuela and by Great Britain.

On the 27th of last October the Government protested, in a note sent to the British legation, against the sending of mail from Puerto España to Ciudad Bolivar on a German war vessel, the *Panther*, and now with greater reason, there is room for a protest and a claim against the participation of the *Fantome*, a vessel of His Majesty, in an action which seriously injures the general interests of the public, because it directly favors the sedition in the Ciudad Bolivar, where the Federal Government is occupied in putting down the revolution.

This department trusts that your excellency will take account of the serious action referred to and of the new protest to which it has given rise for the purposes mentioned in the concluding part of the note of April 5 last, No. 450.

Accept, your excellency, the repeated assurance of my highest and most distinguished consideration.

R. LOPEZ BARALT.

His Excellency WILLIAM HENRY DOVETON HAGGARD,
Resident Minister of His Britannic Majesty.

CORRESPONDENCE AND CABLEGRAMS RELATING TO THE VENEZUELAN PROTOCOLS.

Mr. Bowen to Mr. Hay.

[Telegram.—Paraphrase.]

CARACAS, *December 9, 1902.*

Mr. Bowen reports receipt of a note from the Venezuelan Government stating belief that differences with Great Britain and Germany can be settled by arbitration and requesting Minister Bowen to represent Venezuela as arbitrator. Mr. Bowen requests instructions from the Department. Mr. Bowen adds that combined British and German warships had that day captured all Venezuelan war vessels in harbor La Guaira, and probably in other ports.

Mr. Hay to Mr. Bowen.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, December 10, 1902.

Mr. Hay authorizes Mr. Bowen to act as an arbitrator on the part of Venezuela, if Venezuela proposes arbitration and Great Britain and Germany acquiesce.

Mr. Bowen to Mr. Hay.

[Telegram.]

CARACAS, *December 11, 1902.*

I have received following note from minister for foreign affairs:

"The Venezuelan Government requests you, as the temporary representative of British and German interests, to propose to Great Britain and Germany that the present difficulty that has arisen respecting the manner of settling the claims which have been presented for alleged damages and injuries to British and German subjects during the civil war be submitted to arbitration. Please answer whether you will forward this and will advise me promptly when reply is made.

"BOWEN."

Mr. Hay to Mr. Bowen.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, December 12, 1902.

Mr. Hay advises Mr. Bowen that he has telegraphed without comment to the United States representatives at Berlin and London the Venezuelan proposal to arbitrate manner of settling civil war indemnity claims.

Mr. Bowen to Mr. Hay.

No. 137.] LEGATION OF THE UNITED STATES,
Caracas, Venezuela, December 13, 1902.

SIR: I have the honor to inclose herewith copies of the letters that have passed between the Venezuelan Government and me in regard to my serving as arbitrator for Venezuela.

I am, etc., HERBERT W. BOWEN.

[Inclosure 1.—Translation.]

Doctor Baralt to Mr. Bowen.

MINISTRY OF FOREIGN AFFAIRS,
UNITED STATES OF VENEZUELA,
Caracas, December 9, 1902.

MR. MINISTER: The Chief of the Government knows that your excellency is acquainted with the latest phase of the difficulty between Venezuela and Germany and Great Britain in regard to the settlement of claims for alleged damages to the subjects of the two latter nations during the civil war. The above-mentioned difficulty, in the opinion of the Venezuelan Government, has no valid foundation, as the precedents on which the Government bases its opinion arises from pure doctrines of law as well as from practical doctrines of indisputable validity. But as it has not been possible to convince the other parties of the justice of Venezuela's attitude, and as the Government desires to avoid, without impairing its decorum or its legal faculties, any conflict with nations it considers as friends and to which it is bound by the ties of civilization, it has deemed it proper to resort to the medium of arbitration, a medium resorted to by modern nations and approved by the constitution of the Republic. Consequently, the Chief of the Government, aware of your excellency's personal character and high order of intelligence, has instructed me to request your excellency to serve as arbitrator for the Republic in this question. Your excellency's consent, which I venture to hope will be given as soon as possible, will determine the nature of the proposals which the Government intends to make to the above-mentioned nations.

Accept, etc.,

R. LOPEZ BARALT.

[Inclosure 2.]

Mr. Bowen to Doctor Baralt.

LEGATION OF THE UNITED STATES,
Caracas, December 11, 1902.

MR. MINISTER: In answer to your very courteous letter of the 9th instant, I have the honor to inform you that I cabled the contents thereof to my Government and received the following answer by cable:

"If Venezuela proposes arbitration and Great Britain and Germany acquiesce, you may act as an arbitrator on the part of Venezuela."

I can only add that it will give me great pleasure to serve Venezuela in this matter if the opportunity presents itself and the conditions as above stated by my Government are observed.

I gladly avail myself, etc.,

HERBERT W. BOWEN.

[Inclosure 3.—Translation.]

Doctor Baralt to Mr. Bowen.

MINISTRY OF FOREIGN AFFAIRS OF THE
UNITED STATES OF VENEZUELA,
Caracas, December 11, 1902.

MR. MINISTER: I had the honor to inform the chief of the nation of your reply to my note of the 9th instant, in which your excellency not only kindly consents to serve the Republic in the present international imbroglio, but also informs us of the good will of the United States in permitting you to be arbitrator on the part of Venezuela in the difficulty that has arisen respecting the manner of settling the claims of Great Britain and Germany for alleged damages and injuries to their subjects during the civil war.

The President thanks your excellency sincerely for your friendly attitude, and at the same time desires you to convey to your Government the appreciation of Venezuela of the good will manifested by the United States in this question.

Accept, etc.,

R. LOPEZ BARALT.

Mr. Bowen to Mr. Hay.

[Telegram.]

CARACAS, *December 15, 1902.*

Very important for me to know without delay whether England and Germany will answer my cablegram proposing arbitration.

BOWEN.

Mr. Hay to Mr. Bowen.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, December 16, 1902.

Mr. Hay informs Mr. Bowen that no reply has been received from Great Britain and Germany. He has repeated proposition to arbitrate, with strong recommendation, and will advise Mr. Bowen promptly of replies when received.

Mr. Bowen to Mr. Hay.

[Telegram.—Paraphrase.]

CARACAS, *December 18, 1902.*

Mr. Bowen has received the following official communication:

"The Venezuelan Government confers on Mr. Herbert W. Bowen full powers to enter into negotiations to settle in the most favorable manner possible to the interests of the Republic the present difficulty which has arisen with the United Kingdom of Great Britain, the German Empire, and the Kingdom of Italy.

"In witness whereof these presents are issued in Caracas the 18th of December, 1902.

"CIPRIANO CASTRO,
"*Constitutional President.*

"Countersigned:
"LOPEZ BARALT,
"*Minister for Foreign Affairs.*"

Mr. Bowen requests that if Mr. Hay decides to authorize him thus to act for Venezuela, to notify Germany, Great Britain, and Italy and obtain their consent immediately and request them to issue orders for an immediate stay of proceedings in Venezuela. He thinks he should treat with the ambassadors of those three powers at Washington, and not with the naval officers in Venezuela nor with the plenipotentiaries sent to Caracas from Berlin, London, and Rome, but he begs Mr. Hay to arrange the time and place. He thinks there should be no unnecessary delay.

If he leaves Caracas he would proceed by the regular steamer to arrive in New York December 29, but if Mr. Hay authorizes his going on the *Marietta* he could arrive a week earlier.

Mr. Hay to Mr. Bowen.

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,
Washington, December 18, 1902.

Mr. Hay informs Mr. Bowen that he has cabled to London, Berlin, and Rome the Venezuelan proposition to empower Mr. Bowen to negotiate on the part of Venezuela for settlement of the pending difficulties of the three powers, and has inquired if they are disposed to assent.

Mr. Bowen to Mr. Hay.

[Telegram.—Paraphrase.]

CARACAS, *December 20, 1902.*

Mr. Bowen states that arbitration at The Hague is objectionable because very slow and expensive, and, in the present case, prejudicial to the interests of the Venezuelan Government, which wishes its war vessels returned at once and the control of its rivers and ports so as to prevent arms and ammunition from being imported by the revolutionists, who are so numerous that if they receive a good supply of arms and ammunition will make the reestablishment of peace more difficult. Mr. Bowen believes that Venezuela would be satisfied to pay a good sum in cash at once to the three powers, and would agree that a mixed commission should settle the amounts to be paid on claims, and that Venezuela would furnish ample guaranty that payment of such amounts will be promptly made. Mr. Bowen states that in the exercise of the full powers given to him he may decide that in the interests of Venezuela it is better to accept at once and in full the ultimatums of the three powers than to leave the matter to the tribunal at The Hague. He states that he of course prefers a modification of the ultimatums, if possible, concerning amounts of cash payments. He asks, if Hague arbitration is desired, what favorable proposition can be made to Venezuela by the powers? If they would release war ships immediately after and stop blockade? He adds that he is bound to act in the interest of Venezuela.

Mr. Bowen to Mr. Hay.

No. 145.] LEGATION OF THE UNITED STATES,
Caracas, December 27, 1902.

SIR: I have the honor to inclose a translation of a petition to President Castro from the leading men of Caracas, asking that I be authorized to arrange the pending difficulty between Venezuela and Great Britain, Germany, and Italy.

I am, etc.,

HERBERT W. BOWEN.

[Inclosure.—Translation.]

CARACAS, *December 16, 1902—4.30 p. m.*

To the Citizen President of the United States of Venezuela:

The undersigned having assembled for the purpose of trying to aid the Government in the present conflict caused by the aggressive attitude of Germany and England, and having been asked by you to submit our opinion in writing, we do so, as follows:

In view of the aggressive acts committed, of the absolute helplessness of Venezuela to oppose with force the combined action of Germany and England, and of the absolute lack of resources which civilization and diplomacy would advise to put an end to the conflict, and in view, further, of the fact that the Government and people of Venezuela have done all that the national decorum and dignity demand, we consider that the time has arrived to yield to force, with the proper protests; and in virtue of the foregoing, we respectfully suggest that full powers be given to the envoy extraordinary and minister plenipotentiary of the United States of North America to take the necessary steps to arrange the difficulty in the manner least prejudicial to the country.

With all consideration and respect, we subscribe ourselves your very attentive and obedient servants.

J. E. LINARES.
H. L. BOULTON.
CARLOS SANTANA.
NICOMEDES ZULOAGA.
CARLOS ZULOAGA.
F. DE SALAS PEREZ.
E. MONTAUBAN.
M. CHAPELLÍN.
JOSE HERRERA.
JUAN A. TRAVIESO.
J. DE J. PAÚL.

Mr. Hay to Mr. Bowen.

[Telegram.—Cipher.]

DEPARTMENT OF STATE,
Washington, December 27, 1902.

The following is the British memorandum in regard to the terms of arbitration:

"His Majesty's Government have, in consultation with the German Government, taken into their careful consideration the proposal communicated by the United States Government at the instance of that of Venezuela. The proposal is as follows:

"That the present difficulty respecting the matter of settling claims for injuries to British and German subjects during the insurrection be submitted to arbitration. The scope and intention of this proposal would obviously require further explanation. Its effect would apparently be to refer to arbitration only such claims as had reference to injuries resulting from the recent insurrection. This formula would evidently include a part only of the claims put forward by the two Governments, and we are left in doubt as to the manner in which the remaining claims are to be dealt with. Apart, however, from this, some of the claims are of a kind which no government could agree to refer to arbitration. The claims for injuries to the person and property of British subjects, owing to the confiscation of British vessels, the plundering of their contents, and the maltreatment of their crews, as well as some claims for the ill usage and false imprisonment of British subjects, are of this description. The amount of these claims is no doubt comparatively insignificant, but the principle at stake is of the first importance, and His Majesty's Government could not admit that there was any doubt of the liability of the Venezuelan Government in respect to them. His Majesty's Government desire, moreover, to draw attention to the circumstances under which arbitration is now proposed to them. The Venezuelan Government have, during the last six months, had ample opportunities for submitting such a proposal. On July 29, and again on November 11, it was intimated to them in the clearest language that unless His Majesty's Government received satisfactory assurances from them, and unless some steps were taken to compensate the parties injured by their conduct, it would become necessary for His Majesty's Government to enforce their just demands. No attention was paid to these solemn warnings, and in consequence of the manner in which they were disregarded His Majesty's Government found themselves reluctantly compelled to have recourse to the measures of coercion which are now in progress. His Majesty's Government have, moreover, already agreed that in the event of the Venezuelan Government making a declaration that they will recognize the principle of the justice of the British claims and that they will at once pay compensation in the shipping cases and in the cases where British subjects have been falsely imprisoned and maltreated His Majesty's Government will be ready, so far as the remaining claims are concerned, to accept the decision of a mixed commission, which will determine the amount to be paid and the security to be given for payment. A corresponding intimation has been made by the German Government. This mode of procedure seemed to both Governments to provide a reasonable and adequate mode of disposing of their claims. They have, however, no objection to substitute for the special commission a reference to arbitration, with certain essential reservations. These reservations are, so far as the British claims are concerned, as follows:

"One. The claims, small as has already been pointed out in pecuniary amount, arising out of the seizure and plundering of British vessels and outrages on their crews and the maltreatment and false imprisonment of British subjects, are not to be referred to arbitration.

"Two. In cases where the claim is for injury to or wrongful seizure of property, the questions which the arbitrators will have to decide will only be (*a*) whether the injury took place and whether the sentence was wrongful, and (*b*) if so, what amount of compensation is due. That in such cases a liability exists must be admitted in principle.

"Three. In the case of claims other than the above we are ready to accept arbitration without any reserve. It would, in the opinion of both Governments, be necessary that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation.

"Should the President of the United States be willing to undertake the task of arbitrator, the British and German Governments would avail themselves of his good offices with the highest satisfaction. If it should unfortunately prove impossible for the President to render this important service to the two Governments, they are prepared to refer the questions at issue to arbitration by The Hague tribunal."

HAY.

Mr. Hay to Mr. Bowen.

[Telegram.]

DEPARTMENT OF STATE,
Washington, December 27, 1902.

The German propositions in regard to preliminary conditions of arbitration are as follows:

"The Imperial German Government expresses to the Government of the United States its earnest thanks for its efforts to adjust the troubles with Venezuela. The proposition made by the United States to establish an arbitration appears to Germany, as well as to England, a suitable means by which to arrive at a just decision in regard to their claims. It is to be noted, however, that there are certain claims of Germany which can not be submitted to arbitration, namely, such claims as had arisen out of the civil war from 1898 to 1900, which were set forth in the memorandum addressed by the chancellor to the Reichstag on December 8, 1902. These claims have been assessed by Germany at an aggregate of three hundred and twenty-five thousand dollars, which must be paid immediately or sufficiently guaranteed by Venezuela. All other claims set forth in the ultimatums will be submitted to arbitration—that is to say, not only those arising out of the present civil war in Venezuela, but also, as far as Germany is concerned, the claims referred to in the above-mentioned memorandum, which are based on the failure of the Government of Venezuela to fulfill its obligations toward German contractors under treaty engagements. The arbitrator shall decide upon the claims submitted as well as on the mode of satisfying them, and the security to be given in the case of claims arising from damage to or illegal seizure of property. The Government of Venezuela also will be required to admit in principle its responsibility—that is to say, that this responsibility does not form the basis of the present arbitration, but that the arbitrator shall decide solely as to the injury to or illegal seizure of property, and shall assess the damages therefor. The Government of the United States will place Germany and Great Britain under profound obligation if it will use its good offices to induce the Government of Venezuela to accept these propositions. The two Governments would be grateful to the President of the United States if he would accept the position of arbitrator under the foregoing conditions. If, however, the President of the United States should, to the great regret of the two Governments, decline their invitation, then they are prepared to submit the case to The Hague tribunal."

Mr. Bowen to Mr. Hay.

[Telegram.—Paraphrase.]

CARACAS, *December 31, 1902.*

Mr. Bowen quotes the following answer received from the President of Venezuela:

"I recognize in principle the claims which the allied powers have presented to Venezuela. They would already have been settled if it had not been that the civil war required all the attention and resources of the Government. To-day the Government bows to superior force, and desires to send Mr. Bowen to Washington at once to confer there with the representatives of the powers that have claims against Venezuela, in order to arrange either an immediate settlement of all the claims or the preliminaries for a reference to the tribunal of The Hague or to an American republic, to be selected by the allied powers and by the Government of Venezuela. Mr. Bowen would be duly authorized to settle the whole question as the representative of Venezuela.

"CIPRIANO CASTRO."

Mr. Bowen urges, in view of the foregoing, that the Secretary of State request the powers to raise their blockade at once.

Mr. Bowen to Mr. Hay.

[Telegram.—Paraphrase.]

CARACAS, *January 6, 1903.*

Mr. Bowen states that the attitude of the authorities in Caracas, both toward foreigners and the blockaders, has been exemplary since the 10th day of last December, when all the British and German subjects resident in Venezuela who had been arrested were set free. He reports that President Castro has done all in his power to come to a fair agreement with the allied powers; that he has been ready and

anxious to settle his controversy with them; that he has believed that if he could send a representative to Washington to confer with diplomatic representatives there of the allied powers his representative could convince them that the terms he has to offer are reasonable and would be so satisfactory that it would be unnecessary to carry the controversy to The Hague; that the claims against him are purely commercial in character; that he acknowledges that he must pay such of them as are just; that he would have preferred to wait before paying them until he had reestablished peace in Venezuela, but since the allied powers have declared he must yield at once to their demands, he feels that he is obliged to bow to superior force. Mr. Bowen further says that President Castro, under the foregoing circumstances, desires a speedy settlement of the controversy, so as to put an end to the blockade of his ports, which deprives him of paying the expenses of his Government and which is oppressive to his people and to all foreigners residing in Venezuela. President Castro thinks it strange that, as he is willing to pay what he owes and to offer a good guaranty that he will satisfy his creditors, he should not be allowed to come to an agreement with them without delay, but is forced to carry the controversy before the tribunal at The Hague. President Castro has the greatest respect for that tribunal, but does not see why he should be forced to submit a controversy to it which could be settled at Washington quickly, easily, and at little expense. A proposition to settle in civil cases being always in order before the court renders its judgment, President Castro thinks that, as this is essentially a civil case, the allied powers should at least give his representative a courteous hearing; but if they are indisposed to do so and insist on The Hague, he feels that they ought to raise their blockade the moment he binds himself to abide by the decision of that tribunal. As he represents a weak nation, and can not enforce his views, he trusts to the Government at Washington to use its good offices to secure just treatment for him.

Mr. Hay to Mr. Bowen.

[Telegram.]

DEPARTMENT OF STATE,
Washington, January 6, 1903.

The following memorandum, being the reply of the German Government, was communicated to Ambassador Tower to-day:

"The German Government learns with satisfaction that the Venezuelan Government has accepted its demands in principle. Before further negotiations can be undertaken with Venezuela, however, it seems necessary that the President of Venezuela should make a definite statement as to the unconditional acceptance of the three preliminary conditions set forth in the German memorandum of December 22, 1902. He will also have especially to declare how he intends either to pay or to secure the claims set forth in paragraph 1. On receipt of a satisfactory assurance from the Government of Venezuela, the German Government will be prepared to instruct its ambassador in Washington to open negotiations with Mr. Bowen, as the representative of Venezuela, and to consider his propositions in regard to an adjustment. These propositions may relate to an immediate settlement, or to a reference to The Hague tribunal, of all claims, except, of course, those mentioned in paragraph 1. The German Government makes the condition, however, that the discussion of any proposition for immediate payment shall not prejudice the right of reference to The Hague tribunal.

"The German Government will be very greatly obliged to the Government of the United States if it will transmit the foregoing reply to President Castro."

Mr. Hay to Mr. Bowen.

[Telegram.]

DEPARTMENT OF STATE,
Washington, January 7, 1903.

United States ambassador to Italy sends me to-day the Italian reply, which is in substantially the same terms as the British and German memorandum, with following addition:

"Referring to their preceding declarations, Government of Italy gives its consent on condition that the claims of Italian subjects receive same treatment as analogous claims of the other powers."

HAY.

Mr. Bowen to Mr. Hay.

[Telegram.—Paraphrase.]

CARACAS, *January 7, 1903.*

Mr. Bowen communicates the following statement from President of Venezuela:

"MR. MINISTER: The Venezuelan Government accepts the conditions of Great Britain and Germany; requests you to go immediately to Washington for the purpose of conferring there with the diplomatic representatives of Great Britain and Germany and with the diplomatic representatives of other nations that have claims against Venezuela, and to arrange either an immediate settlement of said claims or the preliminaries for submitting them to arbitration.

"CIPRIANO CASTRO,
"*Constitutional President.*"

Mr. Bowen states that the guaranty will be the custom-houses and begs that the blockade be raised at once.

Mr. Bowen's full powers.

The Venezuelan Government grants full powers to Mr. Herbert W. Bowen to effect at Washington with the diplomatic representatives of the nations that have claims against Venezuela the immediate settlement of them or the preliminaries for the submission to arbitration of such of them as can not be settled immediately.

CARACAS, *January 7, 1903.*

The Constitutional President.

[SEAL.] CIPRIANO CASTRO.

Countersigned:

The minister of the interior and acting minister for foreign affairs.

[SEAL.] R. LOPEZ BARALT.

Mr. Hay to Mr. Bowen.

[Telegram.—Paraphrase.]

WASHINGTON, *January 8, 1903.*

Acknowledges Mr. Bowen's telegram of the 7th, which was communicated to the powers. Informs him that a naval vessel will leave Culebra immediately and will be at his disposition after the 10th, the time required to reach La Guaira.

Mr. Bowen to Mr. Hay.

[Telegram.]

CHARLESTON, S. C., *January 19, 1903.*

Have just landed. Shall arrive Arlington Hotel, Washington, to-morrow morning.

HERBERT W. BOWEN.

Statement left in the hands of Sir Michael H. Herbert.

Mr. Bowen proposes that all claims against Venezuela shall be paid out of the customs receipts of the two ports of La Guaira and Puerto Cabello, the percentage to be 30 per cent, each month, of the receipts. In case of failure on the part of Venezuela to pay the said 30 per cent, the creditor nations will be authorized to put, with the consent and without any opposition on the part of Venezuela, Belgian custom officials in charge of the said two custom-houses, and to administer them until the entire foreign debt is paid.

HERBERT W. BOWEN.

WASHINGTON, *January 23, 1903.*

Sir Michael H. Herbert to Mr. Bowen.

BRITISH EMBASSY, *Washington, January 23, 1903.*

DEAR MR. BOWEN: Immediately after you left the embassy on the 20th instant I telegraphed to my Government your formal request that the blockade of the Venezuelan ports be raised before the commencement of the negotiations in Washington.

I have now received a telegram from Lord Lansdowne in reply, setting forth the conditions which must be accepted by the Venezuelan Government before his lordship can comply with your request. They are as follows:

1. The claims (small in pecuniary amount) arising out of the seizure and plundering of British vessels and outrages on their crews, and the maltreatment and false imprisonment of British subjects, must be satisfied at once.

2. The other claims for compensation, including railway claims and those for injury or wrongful seizure of property, must be met by an immediate payment to His Majesty's Government or by a guaranty adequate to secure them. These claims can be, if desired, examined by a mixed commission.

3. An arrangement must be entered into to satisfy the claims of the bondholders, including a provision for definite sources of payment.

4. There must be an exchange of notes between His Majesty's Government and that of Venezuela, renewing the convention of October 29, 1834.

On learning that the negotiations have resulted in an agreement fulfilling the above conditions, His Majesty's Government will at once give orders that the blockade of Venezuelan ports shall be raised.

I hope to receive my full instructions, and all information relating to them to-morrow, when I shall be in a position to explain any points in connection with the above conditions which may not seem clear to you.

Believe me, etc., MICHAEL H. HERBERT.

Mr. Bowen to Sir Michael H. Herbert.

WASHINGTON, D. C., *January 23, 1903.*

DEAR SIR MICHAEL: In answer to your letter of to-day, stating the conditions on which Great Britain will raise the blockade of the Venezuelan ports, I have the honor to inform you that I accept those conditions, as they are substantially the same as those already accepted by the Venezuelan Government.

I therefore request that your Government give orders at once to have the said blockade raised.

Believe me, etc., HERBERT W. BOWEN.

Count von Quadt to Mr. Bowen.

GERMAN EMBASSY, *Washington, D. C., January 24, 1903.*

MY DEAR MR. MINISTER: With reference to the conversation we just had, I beg to state that the blockade of the Venezuelan ports will be raised by the Imperial German Government immediately—i. e., at the same time as Great Britain does so—if you sign the document which is herewith annexed and undertake therefore all the obligations herein contained.

Believe me, etc., A. QUADT,
Imperial German Charge d'Affaires.

Document mentioned in the preceding letter.

I. As the Imperial German Government holds that the German claims, originated from the Venezuelan civil wars of 1898 to 1900, are no more apt to be submitted to arbitration, the Government of Venezuela has to acknowledge at once these claims, amounting to 1,718,815 bolivars circa $325,000, and either to pay the said amount cash without any delay, or, should this be impossible, to guarantee the speedy payment of them by warrants which are deemed sufficient by the Imperial German Government.

II. All the other claims which have already been brought to the knowledge of the Venezuelan Government in the ultimatum delivered by the imperial minister resident

at Caracas—i. e., claims resulting from the present civil war, further claims resulting from the construction of the slaughterhouse at Caracas, as well as the claims of the German Great Venezuelan Railroad for the nonpayment of the guaranteed interest—are to be submitted to a mixed commission, should an immediate settlement not be possible.

III. The said commission will have to decide both about the fact whether said claims are materially founded and about the manner in which they will have to be settled or which guaranty will have to be offered for their settlement. Inasmuch as these claims result from damages inflicted on property or the illegal seizure of such property, the Venezuelan Government has to acknowledge its liability in principle, so that such liability in itself will not be an object of arbitration, and the decision of the commission will only extend to the question whether the inflicting of damages or the seizure of such property was illegal. The commission will also have to fix the amount of indemnity.

Mr. Bowen, having shown his full powers as representative of the Venezuelan Government, accepts herewith the three above-mentioned conditions without any reserve and agrees to give to Germany the same guaranties that Mr. Bowen has given to Great Britain, and which are stated in his letter to Sir M. Herbert, dated January 23, 1903, in confirmation whereof he has applied his signature under this document.

HERBERT W. BOWEN.

WASHINGTON, D. C., *January 24, 1903.*

Additional document presented by Count Quadt.

WASHINGTON, *January 24, 1903.*

The conditions of the German Government having been accepted, Mr. Bowen, as representative of the Venezuelan Government, will now have to provide at once for payment of the 1,718,815 bolivars mentioned under No. 1 of the conditions, or give an adequate guaranty for this amount. Should Mr. Bowen choose the latter way, the guaranty is to be specified distinctly. For instance, in case of a guaranty based on the customs revenues, as suggested by Mr. Bowen, it would be necessary to state exactly in which [way] payment will take place out of these revenues. The guaranty will have to be given *de facto* and without any delay.

Mr. Bowen's proposals relative to guaranty will first have to be cabled to the German Government.

HERBERT W. BOWEN.

Mr. Mayor des Planches to Mr. Bowen.

WASHINGTON, D. C., *January 24, 1903.*

MY DEAR MINISTER: With reference to the conversation we just had, I beg to state that the blockade of the Venezuelan ports will be raised by the Royal Italian Government immediately—i. e., at the same time as Germany and Great Britain do so—provided you sign a document in which, in virtue of the full powers granted to you by the Venezuelan Government, you bind yourself to give to my Government, for the Italian claims of every kind, the same guaranty you have given to Germany and Great Britain.

Believe me, etc.,

E. MAYOR DES PLANCHES.

Mr. Bowen to Mr. Mayor des Planches.

WASHINGTON, *January 24, 1903.*

MY DEAR MR. AMBASSADOR: In answer to your letter of this date I have much pleasure in informing you that I hereby consent and agree to give for the Italian claims the same guaranty that I have given for the British and German claims.

Believe me, etc.,

HERBERT W. BOWEN.

Mr. Bowen's agreement respecting the 30 per cent.

WASHINGTON, *January 27, 1903.*

I hereby agree that Venezuela will pay 30 per cent of the total income of the ports of La Guaira and Puerto Cabello to the nations that have claims against her, and it is distinctly understood that the said 30 per cent will be given exclusively to meet the claims mentioned in the recent ultimatums of the allied powers and the unsettled claims of other nations that existed when the said ultimatums were presented. At the end of each month the amount of the total income of the said two ports will be duly announced to the creditor nations and 30 per cent of that amount will be paid to them, even if the whole amount should be lost or stolen, for Venezuela in that case would be bound to pay the said 30 per cent even if she has to take it from other custom houses or borrow the said 30 per cent. It is further understood that the said 30 per cent is to be considered absolute and unchangeable and not to be diminished by any other agreements ever made, or ever to be made, affecting the customs receipts of the said two ports.

HERBERT W. BOWEN.

Mr. Bowen to Sir Michael H. Herbert.

WASHINGTON, *January 27, 1903.*

DEAR SIR MICHAEL: Please do not fail to state in your cablegram that I can not consent to give preferential treatment to the allied powers, because, if the matter were referred to the Hague, all the creditor nations would be put on the same footing. The allied powers, therefore, should not try to press the point, as it would be unfair to do so.

Believe me, etc., HERBERT W. BOWEN.

Mr. Bowen's objections.

WASHINGTON, *January 30, 1903.*

I object to paying first the claims of the allies and the claims of the other nations afterwards because, first, I think it unjust and unfair and illegal to tie the hands of the said other nations for the period of five or six years that it would take to pay the claims of the allies; second, if I recognize that brute force alone can be respected in the collection of claims, I should encourage the said other nations to use force also; third, if the allied powers wanted preferential treatment, they should have asked for it in the beginning and should not now propose it after I understood clearly that all the conditions of the allied powers had been stated. If, however, this demand for preferential treatment is raised simply as a point of honor, I am willing to agree that the entire 30 per cent be paid to the allied powers for the first month.

HERBERT W. BOWEN.

Mr. Bowen to Sir Michael H. Herbert.

WASHINGTON, *February 2, 1903.*

DEAR SIR MICHAEL: I have given due consideration to your Government's proposition that two-thirds of the 30 per cent of the customs receipts of La Guaira and Puerto Cabello be given to the allied powers and that the remaining third be paid to the peace powers. That proposition I must decline. I can not accept even in principle that preferential treatment can be rightly obtained by blockades and bombardments. It would be absolutely offensive to modern civilization to recognize that principle and to incorporate it into the law of nations, as it would have to be if the allied powers and the peace powers should agree to it and acknowledge it. Furthermore, that proposition is objectionable because it would keep the allied powers allied for a period of over six years. Venezuela can not, I am sure, be expected to encourage the maintenance of alliances against her. On this side of the water we want peace, not alliances.

Now, as the question of preferential treatment is the only one on which we have not agreed, I hereby propose that we leave that question to The Hague. What we have already agreed upon we can hold to and stand by. We need only to add to it that we have decided to submit the question of preferential treatment to The Hague.

If this proposition is accepted—and I do not see how it can be declined—there would be, of course, no reason to continue the blockade.

This solution of the controversy is honorable to all parties, and I beg you to communicate it to your colleagues at your earliest convenience.

I am, etc.,

HERBERT W. BOWEN.

Mr. Bowen to Count von Quadt.

WASHINGTON, D. C., *February 5, 1903.*

MY DEAR COUNT QUADT: I hereby agree that Germany shall be paid in cash the same amount (£5,500) that I have agreed shall be paid to Great Britain.

I am, etc.,

HERBERT W. BOWEN.

NOTE.—This cash payment of £5,500 shall be made within thirty days after the signing of the protocol, in case the cash can not be paid on the very day it is signed.

HERBERT W. BOWEN.

Same to Italy except that the cash payment will be made within sixty days.

Mr. Bowen to Baron von Sternburg.

WASHINGTON, D. C., *February 10, 1903.*

DEAR BARON VON STERNBURG: I agreed to pay each of the allied powers £5,500 in cash, with the understanding that no other cash demand would be made. I therefore refuse absolutely to pay Germany's new demand for a cash payment of 1,700,000 bolivars and Italy's new demand for a cash payment 2,800,000 bolivars. Our agreement was that the 1,700,000 and the 2,800,000 bolivars were to be paid out of the 30 per cent of the customs receipts at the same time and in the same manner as were to be paid the claims of all the other creditor nations. The special agreement I concluded with Germany was that I should pay cash or give a sufficient guaranty. I gave the latter, and its sufficiency has never been disputed.

I am, etc.,

HERBERT W. BOWEN.

Mr. Bowen to Sir Michael H. Herbert.

WASHINGTON, D. C., *February 10, 1903.*

DEAR SIR MICHAEL: I have much pleasure in accepting the British protocol, which is very satisfactory to Venezuela, and which, in my opinion, is very creditable to you and to the British Government.

I am, etc.,

HERBERT W. BOWEN.

A concession to Germany.

In consideration of the fact that Great Britain and Italy are willing to waive their claims to priority of payments in favor of Germany in regard to the payment of her first-rank claims, and also in view of the fact that there was a misunderstanding between the German embassy and German Government in regard to the interpretation of the latter's instruction prior to the arrival of the German minister, Mr. Bowen is now willing to pay to Germany, within three months of the date of the signing of the German protocol, one-half of Germany's cash demand.

This concession is made by Mr. Bowen in order to arrive at a settlement, although he considers that he would be perfectly justified, in view of the documents already signed during the negotiations, in standing on them and in absolutely refusing any cash payment other than that of the £5,500.

It is understood that the other half of the German cash demand, and also the whole of the Italian claims of the first rank, amounting to about 2,810,000 bolivars, shall not be subject to revision.

HERBERT W. BOWEN.

WASHINGTON, *February 11, 1903.*

Explanation.

WASHINGTON, *February 14, 1903.*

The payment of the sum of £5,500 is to be considered payment in full of the amount specified in the British protocol as "about £5,500."

MICHAEL H. HERBERT.

Interpretation of protocols.

WASHINGTON, *February 14, 1903.*

Our interpretation of the protocols was and is that the 30 per cent of the total income of the customs receipts of La Guaira and Puerto Cabello shall begin to be set apart on the 1st day of March, 1903, and continue to be set apart through the said month, and that the first payment will be due not the 1st of March but the 1st of April, 1903.

HERBERT W. BOWEN.
MICHAEL H. HERBERT.
E. MAYOR DES PLANCHES.
H. STERNBURG.

Interpretation of protocols.

BRITISH EMBASSY.

We interpret our three protocols to mean that the 30 per cent referred to therein of the total income of the custom houses of La Guaira and Puerto Cabello shall be delivered to the representative of the Bank of England at Caracas, and that the said 30 per cent is not assigned to any one power, but is to be retained by the said representative of the Bank of England in Caracas and paid out by him in conformity with the decision rendered by the tribunal at The Hague.

MICHAEL HERBERT.
E. MAYOR DES PLANCHES.
H. STERNBURG.
HERBERT W. BOWEN.

WASHINGTON, *February 14, 1903.*

British protocol.

Whereas certain differences have arisen between the United States of Venezuela and Great Britain in connection with the claims of British subjects against the Venezuelan Government, the undersigned, Mr. Herbert W. Bowen, duly authorized thereto by the Government of Venezuela and his excellency the Right Honorable Sir Michael H. Herbert, K. C. M. G., C. B., His Britannic Majesty's ambassador extraordinary and plenipotentiary to the United States of America, have agreed as follows:

ARTICLE I.

The Venezuelan Government declare that they recognize in principle the justice of the claims which have been preferred by His Majesty's Government on behalf of British subjects.

ARTICLE II.

The Venezuelan Government will satisfy at once, by payment in cash or its equivalent, the claims of British subjects which amount to about five thousand five hundred pounds (£5,500), arising out of the seizure and plundering of British vessels and the outrages on their crews, and the maltreatment and false imprisonment of British subjects.

ARTICLE III.

The Venezuelan and British Governments agree that the other British claims, including claims by British subjects other than those dealt with in Article VI hereof, and including those preferred by the railway companies, shall, unless otherwise satisfied, be referred to a mixed commission constituted in the manner defined in Article IV of this protocol and which shall examine the claims and decide upon the amount to be awarded in satisfaction of each claim.

The Venezuelan Government admit their liability in cases where the claim is for injury to or wrongful seizure of property, and consequently the questions which the mixed commission will have to decide in such cases will only be: (*a*) Whether the injury took place and whether the seizure was wrongful, and (*b*) If so, what amount of compensation is due.

In other cases the claims shall be referred to the Mixed Commission without reservation.

ARTICLE IV.

The Mixed Commission shall consist of one Venezuelan member and one British member. In each case where they come to an agreement their decision shall be final. In cases of disagreement the claims shall be referred to the decision of an umpire nominated by the President of the United States of America.

ARTICLE V.

The Venezuelan Government, being willing to provide a sum sufficient for the payment within a reasonable time of the claims specified in Article III and similar claims preferred by other governments, undertake to assign to the British Government, commencing the first day of March, 1903, for this purpose, and to alienate to no other purpose, 30 per cent in monthly payments of the customs revenues of La Guaira and Puerto Cabello. In the case of failure to carry out this undertaking, Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government in respect of the above-mentioned claims shall have been discharged.

Any question as to the distribution of the customs revenues so to be assigned, and as to the rights of Great Britain, Germany, and Italy to a separate settlement of their claims, shall be determined, in default of arrangement, by the tribunal at The Hague, to which any other power interested may appeal.

Pending the decision of The Hague tribunal the said 30 per cent of the receipts of the customs of the ports of La Guaira and Puerto Cabello are to be paid over to the representatives of the Bank of England at Caracas.

ARTICLE VI.

The Venezuelan Government further undertake to enter into a fresh arrangement respecting the external debt of Venezuela with a view to the satisfaction of the claims of the bondholders. This arrangement shall include a definition of the sources from which the necessary payments are to be provided.

ARTICLE VII.

The Venezuelan and British Governments agree that, inasmuch as it may be contended that the establishment of a blockade of Venezuelan ports by the British naval forces has *ipso facto* created a state of war between Venezuela and Great Britain, and that any treaty existing between the two countries has been thereby abrogated, it shall be recorded in an exchange of notes between the undersigned that the convention between Venezuela and Great Britain of October 29, 1834, which adopted and confirmed *mutatis mutandis* the treaty of April 18, 1825, between Great Britain and the State of Colombia, shall be deemed to be renewed and confirmed or provisionally renewed and confirmed pending conclusion of a new treaty of amity and commerce.

ARTICLE VIII.

Immediately upon the signature of this protocal arrangements will be made by His Majesty's Government in concert with the Governments of Germany and Italy to raise the blockade of the Venezuelan ports.

His Majesty's Government will be prepared to restore the vessels of the Venezuelan navy which have been seized and further to release any other vessels captured under

the Venezuelan flag on the receipt of a guarantee from the Venezuelan Government that they will hold His Majesty's Government indemnified in respect of any proceedings which might be taken against them by the owners of such ships or of goods on board them.

ARTICLE IX.

The treaty of amity and commerce of October 29, 1834, having been confirmed in accordance with the terms of Article VII of this protocol, the Government of Venezuela will be happy to renew diplomatic relations with His Majesty's Government.

Done in duplicate at Washington this 13th day of February, 1903.

HERBERT W. BOWEN.
MICHAEL H. HERBERT.

Italian protocol.

Whereas certain differences have arisen between Italy and the United States of Venezuela in connection with the Italian claims against the Venezuelan Government the undersigned, Mr. Herbert W. Bowen, duly authorized thereto by the Government of Venezuela, and His Excellency Nobile Edmondo Mayor des Planches, commander of the Orders of S. S. Maurice and Lazaras and the Crown of Italy, ambassador extraordinary and plenipotentiary of His Majesty the King of Italy to the United States of America, have agreed as follows:

ARTICLE I.

The Venezuelan Government declare that they recognize in principle the justice of the claims which have been preferred by His Majesty's Government on behalf of Italian subjects.

ARTICLE II.

The Venezuelan Government agree to pay to the Italian Government, as a satisfaction of the point of honor, the sum of £5,500 (five thousand five hundred pounds sterling), in cash or its equivalent, which sum is to be paid within sixty days.

ARTICLE III.

The Venezuelan Government accept, recognize, and will pay the amount of the Italian claims of the first rank derived from the revolutions of 1898–1900, in the sum of 2,810,255 (two million eight hundred and ten thousand two hundred and fifty-five) bolivars.

It is expressly agreed that the payment of the whole of the above Italian claims of the first rank will be made without being the same claims, the same sum submitted to the Mixed Commission, and without any revision or objection.

ARTICLE IV.

The Italian and Venezuelan Governments agree that all the remaining Italian claims, without exception, other than those dealt with in Article VII hereof, shall, unless otherwise satisfied, be referred to a Mixed Commission, to be constituted as soon as possible in the manner defined in Article VI of the protocol, and which shall examine the claims and decide upon the amount to be awarded in satisfaction of each claim.

The Venezuelan Government admit their liability in cases where the claim is for injury to persons and property and for wrongful seizure of the latter, and consequently the questions which the Mixed Commission will have to decide in such cases will only be:

(*a*) Whether the injury took place or whether the seizure was wrongful; and,

(*b*) If so, what amount of compensation is due.

In other cases the claims will be referred to the Mixed Commission without reservation.

ARTICLE V.

The Venezuelan Government being willing to provide a sum sufficient for the payment, within a reasonable time, of the claims specified in Articles III and IV and similar claims preferred by other governments, undertake and obligate themselves

to assign to the Italian Government, commencing the first day of March, 1903, for this purpose, and to alienate to no other purpose 30 per cent of the customs revenues of La Guaira and Puerto Cabello. In the case of failure to carry out this undertaking and obligation Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government in respect of the above-mentioned claims shall have been discharged.

Any question as to the distribution of the customs revenues so to be assigned, and as to the rights of Italy, Great Britain, and Germany to a separate settlement of their claims, shall be determined in default of arrangement, by the tribunal at The Hague, to which any other power interested may appeal. Pending the decision of The Hague tribunal the said 30 per cent of the receipt of the customs of the ports of La Guaira and Puerto Cabello are to be paid over to the representatives of the Bank of England at Caracas.

ARTICLE VI.

The Mixed Commission shall consist of one Italian member and one Venezuelan member. In each case, where they come to an agreement, their decision shall be final. In cases of disagreement, the claims shall be referred to the decision of an umpire nominated by the President of United States of America.

ARTICLE VII.

The Venezuelan Government further undertake to enter into a fresh arrangement respecting the external debt of Venezuela with a view to the satisfaction of the claims of the bondholders. This arrangement shall include a definition of the sources from which the necessary payments are to be provided.

ARTICLE VIII.

The treaty of amity, commerce, and navigation between Italy and Venezuela of June 19, 1861, is renewed and confirmed. It is, however, expressly agreed between the two Governments that the interpretation to be given to the articles 4 and 26 is the following:

"According to the article 4, Italians in Venezuela and Venezuelans in Italy can not in any case receive a treatment less favorable than the natives, and, according to the article 26, Italians in Venezuela and Venezuelans in Italy are entitled to receive in every matter, and especially in matter of claims, the treatment of the most-favored nation, as it is established in the same article 26."

If there is doubt or conflict between the two articles, the article 26 will be followed.

It is further specially agreed that the above treaty shall never be invoked in any case against the provision of the present protocol.

ARTICLE IX.

At once upon the signing of this protocol, arrangements shall be made by His Majesty's Government, in concert with the Governments of Germany and Great Britain, to raise the blockade of the Venezuelan ports.

His Majesty's Government will be prepared to restore the vessels of the Venezuelan navy which may have been seized, and further to release any other vessel captured under the Venezuelan flag during the blockade.

The Government of Venezuela hereby obligate themselves and guarantee that the Italian Government shall be wholly exempted and relieved from any reclamations or claims of any kind which may be made by citizens or corporations of Venezuela, or by citizens or corporations of any other nation, for detention or seizure or destruction of any vessel or of goods on board of them, which may have been or which may be detained, seized or destroyed, by reason of the blockade instituted and carried on by the three allied powers against the Republic of Venezuela.

ARTICLE X.

The treaty of amity, commerce, and navigation of June 19th, 1861, having been renewed and confirmed in accordance with the terms of Article VIII of this protocol, His Majesty's Government declare that they will be happy to reestablish regular diplomatic relations with the Government of Venezuela.

HERBERT W. BOWEN.
E. MAYOR DES PLANCHES.

WASHINGTON, D. C., *February 13, 1903.*

German protocol.

Whereas certain differences have arisen between the United States of Venezuela and Germany in connection with the claims of German subjects against the Venezuelan Government, the undersigned Mr. Herbert W. Bowen, duly authorized by the Government of Venezuela, and Baron Speck von Sternburg, His Imperial German Majesty's envoy extraordinary and minister plenipotentiary, duly authorized by the Imperial German Government, have agreed as follows:

ARTICLE I.

The Venezuelan Government recognize in principle the justice of the claims of German subjects presented by the Imperial German Government.

ARTICLE II.

The German claims originating from the Venezuelan civil wars of 1898 to 1900 amount to 1,718,815.67 bolivars. The Venezuelan Government undertake to pay of said amount immediately in cash the sum of £5,500—137,500 bolivars (five thousand five hundred pounds—one hundred thirty-seven thousand five hundred bolivars) and for the payment of the rest to redeem five bills of exchange for the corresponding installments payable on the 15th of March, the 15th of April, the 15th of May, the 15th of June and the 15th of July, 1903, to the Imperial German diplomatic agent in Caracas. These bills shall be drawn immediately by Mr. Bowen and handed over to Baron Sternburg. Should the Venezuelan Government fail to redeem one of these bills the payment shall be made from the customs receipts of La Guaira and Puerto Cabello, and the administration of both ports shall be put in charge of Belgian custom-house officials until the complete extinction of the said debts.

ARTICLE III.

The German claims not mentioned in the articles II and VI, in particular the claims resulting from the present Venezuelan civil war, the claims of the Great Venezuelan Railroad Company against the Venezuelan Government for passages and freight, the claims of the engineer, Carl Henckel, in Hamburg, and of the Beton and Monierban Company, Limited, in Berlin, for the construction of a slaughterhouse at Caracas, are to be submitted to a mixed commission.

Said commission shall decide both whether the different claims are materially well founded and also upon their amount. The Venezuelan Government admit their liability in cases where the claim is for injury to a wrongful seizure of property, and consequently the commission will not have to decide the question of liability, but only whether the injury to or the seizure of property were wrongful acts, and what amount of compensation is due.

ARTICLE IV.

The mixed commission mentioned in article III shall have its seat in Caracas. It shall consist of two members, one of which is to be appointed by the Government of Venezuela, the other by the Imperial German Government. The appointments are to be made before May 1st, 1903. In each case where the two members come to an agreement on the claims their decision shall be considered as final; in cases of disagreement the claims shall be submitted to the decision of an umpire to be nominated by the President of the United States of America.

ARTICLE V.

For the purpose of paying the claims specified in article 3, as well as similar claims preferred by other powers, the Venezuelan Government shall remit to the representative of the Bank of England in Caracas in monthly installments, beginning from March 1st, 1903, 30 per cent of the customs revenues of La Guaira and Puerto Cabello, which shall not be alienated to any other purpose. Should the Venezuelan Government fail to carry out this obligation Belgian customs officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government in respect of the above-mentioned claims shall have been discharged.

Any questions as to the distribution of the customs revenues specified in the foregoing paragraph, as well as to the rights of Germany, Great Britain, and Italy to a

separate payment of their claims, shall be determined, in default of another agreement, by the Permanent Tribunal of Arbitration at The Hague. All other powers interested may join as parties in the arbitration proceedings against the above-mentioned three powers.

ARTICLE VI.

The Venezuelan Government undertake to make a new satisfactory arrangement to settle simultaneously the 5 per cent Venezuelan loan of 1896, which is chiefly in German hands, and the entire exterior debt. In this arrangement the state revenues to be employed for the service of the debt are to be determined without prejudice to the obligations already existing.

ARTICLE VII.

The Venezuelan men-of-war and merchant vessels captured by the German naval forces shall be returned to the Venezuelan Government in their actual condition. No claims for indemnity can be based on the capture and on the holding of these vessels, neither will an indemnity be granted for injury to or destruction of the same.

ARTICLE VIII.

Immediately upon the signature of this protocol the blockade of the Venezuelan ports shall be raised by the Imperial German Government, in concert with the Governments of Great Britain and Italy. Also the diplomatic relations between the Imperial German and the Venezuelan Governments will be resumed.

Done in duplicate in English and German texts, at Washington, this thirteenth day of February, one thousand nine hundred and three.

HERBERT W. BOWEN.
H. STERNBURG.

FEBRUARY 14, 1903.

BOWEN, *Washington:*

Cablegram received. In the name of Venezuela and mine, I address to you the expression of entire gratitude for the decision and spontaneity with which you have served the cause of justice, which is the cause of humanity and only performed by superior men.

CASTRO.

United States protocol.

Protocol of an agreement between the Secretary of State of the United States of America and the plenipotentiary of the Republic of Venezuela for submission to arbitration of all unsettled claims of citizens of the United States of America against the Republic of Venezuela.

The United States of America and the Republic of Venezuela, through their representatives, John Hay, Secretary of State of the United States of America, and Herbert W. Bowen, the plenipotentiary of the Republic of Venezuela, have agreed upon and signed the following protocol:

ARTICLE I.

All claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the commission hereinafter named by the Department of State of the United States or its legation at Caracas, shall be examined and decided by a Mixed Commission, which shall sit at Caracas, and which shall consist of two members, one of whom is to be appointed by the President of the United States and the other by the President of Venezuela.

It is agreed that an umpire may be named by the Queen of the Netherlands. If either of said Commissioners or the umpire should fail or cease to act, his successor shall be appointed forthwith in the same manner as his predecessor. Said Commissioners and umpire are to be appointed before the first of May, 1903.

The Commissioners and the umpire shall meet in the city of Caracas on the first day of June, 1903. The umpire shall preside over their deliberations, and shall be

competent to decide any question on which the Commissioners disagree. Before assuming the functions of their office the Commissioners and the umpire shall take solemn oath carefully to examine and impartially decide, according to justice and the provisions of this convention, all claims submitted to them, and such oaths shall be entered on the record of their proceedings. The Commissioners, or in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature, or of the provisions of local legislation.

The decisions of the Commission, and in the event of their disagreement, those of the umpire, shall be final and conclusive. They shall be in writing. All awards shall be made payable in United States gold or its equivalent in silver.

ARTICLE II.

The Commissioners, or umpire, as the case may be, shall investigate and decide said claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of or in answer to any claim, and to hear oral or written arguments made by the agent of each Government on every claim. In case of their failure to agree in opinion upon any individual claim, the umpire shall decide.

Every claim shall be formally presented to the Commissioners within thirty days from the day of their first meeting, unless the Commissioners or the umpire in any case extend the period for presenting the claim not exceeding three months longer. The Commissioners shall be bound to examine and decide upon every claim within six months from the day of its first formal presentation, and in case of their disagreement the umpire shall examine and decide within a corresponding period from the date of such disagreement.

ARTICLE III.

The Commissioners and the umpire shall keep an accurate record of their proceedings. For that purpose, each Commissioner shall appoint a secretary versed in the language of both countries to assist them in the transaction of the business of the Commission. Except as herein stipulated, all questions of procedure shall be left to the determination of the Commission, or in case of their disagreement, to the umpire.

ARTICLE IV.

Reasonable compensation to the Commissioners and to the umpire for their services and expenses, and the other expenses of said arbitration, are to be paid in equal moieties by the contracting parties.

ARTICLE V.

In order to pay the total amount of the claims to be adjudicated as aforesaid, and other claims of citizens or subjects of other nations, the Government of Venezuela shall set apart for this purpose, and alienate to no other purpose, beginning with the month of March, 1903, thirty per cent in monthly payments of the customs revenues of La Guaira and Puerto Cabello, and the payments thus set aside shall be divided and distributed in conformity with the decision of The Hague tribunal.

In case of the failure to carry out the above agreement, Belgian officials shall be placed in charge of the customs of the two ports and shall administer them until the liabilities of the Venezuelan Government in respect of the above claims shall have been discharged. The reference of the question above stated to The Hague tribunal will be the subject of a separate protocol.

ARTICLE VI.

All existing and unsatisfied awards in favor of the United States shall be promptly paid, according to the terms of the respective awards.

JOHN HAY,
HERBERT W. BOWEN.

(The protocols with the other peace powers were the same, *mutatis mutandis*, as the United States protocol.) [a]

[a] Look under the respective commissions for texts.

Mr. Bowen's draft protocol.

Protocol of an agreement for the reference to the tribunal at The Hague of the question of preferential treatment.

Italy, Great Britain and Germany, through their respective representatives at Washington, His Excellency Nobile Edmondo Mayor des Planches, Commander of the Order of S. S. Maurice and Lazarus and the Crown of Italy, ambassador extraordinary and plenipotentiary, His Excellency Sir Michael H. Herbert, K. C. M. G., C. B., ambassador extraordinary and plenipotentiary, and Baron Speck von Sternburg, envoy extraordinary and minister plenipotentiary, have agreed upon and signed the following protocol with Herbert W. Bowen, the plenipotentiary of Venezuela:

ARTICLE I.

The question as to whether or not Italy, Great Britain, and Germany are entitled to preferential or separate treatment in the payment of their claims against Venezuela by reason of the fact that they blockaded the ports of Venezuela so as to compel her to make a settlement with them shall be submitted for final decision to the tribunal at The Hague.

Venezuela having agreed to set aside thirty per cent of the customs revenues of La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be distributed among the said nations and its decision shall be final.

ARTICLE II.

The facts on which shall depend the decision of the questions stated in Article I shall be ascertained in such manner as the tribunal may determine.

ARTICLE III.

The Czar of Russia shall be invited to name and appoint three arbitrators to constitute the court that is to determine and settle the questions submitted to it under and by virtue of this protocol.

The court shall meet on the first day of September, 1903, and shall render its decision within six months thereafter.

ARTICLE IV.

The proceedings shall be carried on in the English language.

Except as herein otherwise stipulated, the procedure shall be regulated by The Hague convention of July 29, 1899.

ARTICLE V.

The court shall decide how, when, and by whom the costs of this arbitration shall be paid.

ARTICLE VI.

Any nation having claims against Venezuela may join as a party in the arbitration provided for by this protocol.

Mr. Bowen to Sir Michael H. Herbert.

THE ARLINGTON, *March 19, 1903.*

DEAR SIR MICHAEL: You understand, of course, that if, as rumor says, the allied powers are not disposed to sign The Hague protocol, Venezuela will not be bound to pay to the representative of the Bank of England, at Caracas, the 30 per cent of the customs receipts of La Guaira and Puerto Cabello, for it was agreed that if the money were paid to him he should distribute it in conformity with the decision of The Hague tribunal. As April 1, the time for the first payment to be made, is near at hand, it would seem as if you should inform me promptly just what the intentions of the allied powers are in this matter.

Believe me, etc., HERBERT W. BOWEN.

Sir Michael H. Herbert to Mr. Bowen.

BRITISH EMBASSY, *Washington, March 20, 1903.*

DEAR MR. BOWEN: I know nothing about the rumor referred to in your letter of yesterday, to the effect that the three powers are not disposed to sign The Hague protocol.

As you have obtained an extension of leave, and as you proposed that The Hague tribunal should not meet until next September, there appears to me to be no necessity for immediate action in connection with the The Hague protocol; but, as a matter of fact, I expect to be in a position to discuss it with you next week unless I receive further instructions from my Government.

I am, etc., MICHAEL H. HERBERT.

Mr. Bowen to Sir Michael H. Herbert.

WASHINGTON, D. C., *March 20, 1903.*

DEAR SIR MICHAEL: In answer to your letter of to-day in regard to The Hague protocol, I have the honor to say that as the British protocol of February 13 last provides that, in default of arrangement, the question of preferential treatment shall be decided by The Hague tribunal, it is necessary for me to know whether you intend to propose an arrangement of that question or whether it is to be submitted to the The Hague tribunal for decision. In case it is left to The Hague, the said protocol of the 13th of February provides that, pending the decision, the 30 per cent is to be paid over to the representative of the Bank of England at Caracas.

When you notify me which method of settlement you have decided upon, I will notify the Venezuelan Government. If the case is not to go to The Hague, it would, of course, be improper to have the 30 per cent paid over to the representative of the Bank of England at Caracas, if for no other reason than that no authority has been given to him to pay out the money except in conformity with the decision of The Hague.

I thought it would be in your interest to have this matter cleared up before the 1st of April; but if you are willing to delay, I shall not object, only, of course, I shall not be able to request the Venezuelan Government to pay the 30 per cent to the representative of the Bank of England at Caracas on the 1st of April unless before that date you inform me that you have decided to submit the said question to The Hague tribunal.

I am, etc., HERBERT W. BOWEN.

Sir Michael H. Herbert to Mr. Bowen.

BRITISH EMBASSY, *Washington, March 20, 1903.*

DEAR MR. BOWEN: I have received your letter of to-day, and regret that my letter sent to you this morning was not clear to you.

So far as I am aware, His Majesty's Government wish to submit the question of preferential treatment to The Hague, and unless otherwise instructed, I propose to submit the draft protocol of reference to The Hague tribunal, with certain amendments, to you some time next week.

I am, etc., MICHAEL H. HERBERT.

Mr. Bowen's draft protocol, as amended by Sir Michael H. Herbert.

[Received April 2, 1903.]

Whereas protocols, the texts of which are given in an annex to the present agreement, have been signed between Great Britain, Germany, Italy, the United States of America, France, Spain, Belgium, the Netherlands, Sweden and Norway, and Mexico on the one hand, and Venezuela on the other hand, containing certain conditions agreed upon for the settlement of claims against the Venezuelan Government;

And whereas certain further questions arising out of the action taken by the Governments of Great Britain, Germany, and Italy in connection with the settlement of their claims have not proved to be susceptible of settlement by ordinary diplomatic methods;

And whereas the powers interested are resolved to determine these questions by

reference to arbitration in accordance with the provisions of the convention for the pacific settlement of international disputes signed at The Hague on the 29th July, 1899.

The said powers have, with a view to carry out that resolution, authorized their representatives, that is to say—

For Great Britain, etc., to conclude the following agreement:

ARTICLE I.

The question as to whether or not Great Britain, Germany, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the tribunal at The Hague.

Venezuela having agreed to set aside 30 per cent of the customs revenues of La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand and the other creditor powers on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shalt be distributed among all the creditor powers, and its decision shall be final.

In deciding the questions of preferential or separate treatment to be granted to the blockading powers, the tribunal shall have regard to the resources of Venezuela other than the 30 per cent of the customs revenues so set aside, which may be available for the payment of claims of other powers.

ARTICLE II.

If preferential or separate treatment is not given to Great Britain, Germany, and Italy, the tribunal may consider whether any and what compensation should be made by Venezuela out of the 30 per cent of the customs revenues set aside to these powers for the expense which they have incurred in connection with the blockade.

ARTICLE III.

The facts on which shall depend the decision of the questions stated in Article I shall be ascertained in such manner as the tribunal may determine.

ARTICLE IV.

The Emperor of Russia shall be invited to name and appoint from the members of the permanent court of The Hague three arbitrators to constitute the tribunal which is to determine and settle the questions submitted to it under and by virtue of this agreement. None of the arbitrators so appointed shall be a subject or citizen of any of the signatory powers.

This tribunal shall meet on the first day of September, 1903, and shall render its decision within six months thereafter.

ARTICLE V.

The proceedings shall be carried on in the English language.

Except as herein otherwise stipulated the procedure shall be regulated by the convention of The Hague of July 29, 1899.

ARTICLE VI.

The tribunal shall, subject to the general provision laid down in article 57 of the international convention of July 29, 1899, also decide how, when, and by whom the costs of this arbitration shall be paid.

ARTICLE VII.

Any nation having claims against Venezuela may join as a party in the arbitration provided for by this agreement.

Mr. Bowen to Sir Michael H. Herbert.

WASHINGTON, D. C., *April 2, 1903.*

DEAR SIR MICHAEL: Your amendments leave unchanged about nine-tenths of the articles of my draft protocol. I infer, therefore, that you and your colleagues accept

all of my said protocol except the remaining one-tenth. The nine-tenths on which we all agree state substantially and clearly the subjects we decided to submit to The Hague tribunal, and would in themselves constitute a very fair and equitable protocol. Some of your amendments I am willing, however, to accept. I see no objection whatever to leaving out of Article I the words "by reason of the fact that they blockaded the ports of Venezuela so as to compel her to make a settlement with them," nor to substituting the words "divided between the blockading powers on the one hand and the creditor powers on the other hand" for my words "distributed among the said nations." The new paragraph is objectionable, however, that you add to Article I, to wit—

"In deciding the question of preferential or separate treatment to be granted to the blockading powers, the tribunal shall have regard to the resources of Venezuela other than the 30 per cent of the customs revenues so set aside, which may be available for the payment of claims of other powers."

and my objections to it are the same as are those I have for your amendment which you offer in the form of an entirely new article, designated by you as Article II, and thus worded:

"If preferential or separate treatment is not given to Great Britain, Germany, and Italy, the tribunal may consider whether any and what compensation should be made by Venezuela out of the 30 per cent of the customs revenues set aside to these powers for the expense which they have incurred in connection with the blockade."

My said objections are these:

I. They constitute new demands or claims, and consequently can have no place in this protocol nor in this controversy.

II. You are precluded from gaining recognition and favor for them by Article V of the British protocol of February 13, 1903, which states that the 30 per cent of the customs revenues of La Guaira and Puerto Cabello are to be assigned for the payment of the British claims specified in Article III of the said protocol and similar claims preferred by other governments, and are to be alienated to no other purpose. It is evident from that agreement that no part of the said 30 per cent can be assigned to pay these new demands or claims.

III. By the terms of the British protocol of February 13, 1903, the only questions that are to be submitted to The Hague tribunal are those relating to the distribution of the said 30 per cent and to preferential or separate treatment. These new demands or claims, therefore, can not be submitted to The Hague tribunal.

IV. Inasmuch as the German and Italian protocols of February 13, 1903, contain the same provisions in regard to this matter as the said British protocol does, and as all three of the said protocols are duly signed and sealed, they must be considered binding on all the parties thereto.

V. The said protocols of February 13, 1903, being binding on all parties thereto, were accepted as one of the bases for negotiating protocols with the other powers having claims against Venezuela. Your new demands or claims must for that reason alone be denied recognition and favor.

In my Article III, I have no objection to your substituting the word "Emperor" for "Czar," and the words "from the members of the permanent court of The Hague three arbitrators to constitute the tribunal which" for the words "three arbitrators to constitute the court that;" nor to your adding the sentence "none of the arbitrators as appointed shall be a subject or citizen of any of the signatory powers."

I should like to amend the first sentence of my Article IV so that after the words "the proceedings shall be carried on in the English language," the words shall appear "but arguments to the tribunal may be made in any other language also." I trust you will have no objection to that amendment, and I ask that you accept it.

I prefer that my Article V should not contain your amendment "subject to the general provision laid down in article 57 of the international convention of July 29, 1899," as I hold that the tribunal ought itself to decide without any restriction how, when, and by whom the costs of the arbitration shall be paid.

As regards your preamble, I have to ask that you insert the words "except as herein otherwise stipulated" between the words "accordance" and "with," in the third line of the third paragraph. The preamble thus amended will be satisfactory to me, and I accept it with the understanding, however, that when the definitive protocol shall have been signed by you and your Italian and German colleagues and myself, the other powers having claims against Venezuela may join as parties to the arbitration, and not until then.

I am, etc. HERBERT W. BOWEN

Sir Michael H. Herbert to Mr. Bowen.

BRITISH EMBASSY, *Washington, April 3, 1903.*

DEAR MR. BOWEN: Referring to our interview of this morning, I find, on looking up my papers, that I sent a telegram to my Government on February 24 recording a conversation which I had with you on that day when you handed me your draft protocol for reference of the question of preferential treatment to The Hague tribunal. According to this telegram, I informed you that I had no instructions to draw up the protocol here, and that it was possible that Lord Lansdowne would prefer the terms of reference set forth in my note to Mr. Hay of February 6.

You replied that you were ready to accept any alterations which His Majesty's Government might suggest, and you asked me to telegraph the terms of your protocol to Lord Lansdowne, which I accordingly did.

I am, etc., MICHAEL H. HERBERT.

Mr. Bowen to Sir Michael H. Herbert.

WASHINGTON, D. C., *April 3, 1903.*

DEAR SIR MICHAEL: In answer to your kind letter of this date, I have the honor to inform you that the most I have ever said to you regarding amendments to either the protocol of the 13th of February or The Hague protocol was that I should be pleased to accept any unimportant amendments your Government may suggest.

You never gave me a copy of your note of February 6 to Mr. Hay, and I have never possessed a copy of it. I can not be bound by what you wrote to Mr. Hay on February 6, for, if I remember rightly, your letter to him of that date was a proposition that the question of preferential treatment be left to the President of the United States to decide. That proposition I opposed the moment your said letter was read to me. There the matter ended; and I am surprised that you should now intimate that I am in any way bound by the terms of a proposition I declined to accept. I am also greatly surprised that you should have interpreted anything I said as indicating my willingness to give you or your allies or your respective Governments *carte blanche* in regard to amending my protocols; for my principal and openly declared aim has been to prevent any new demands or claims from being brought forward after our agreements have been made. I am very sorry that you should have misunderstood me, and I am,

Yours, very truly, HERBERT W. BOWEN.

Mr. Bowen to Sir Michael H. Herbert.

WASHINGTON, D. C., *April 25, 1903.*

DEAR SIR MICHAEL: During our negotiations I have been not only willing, but also anxious, to concede to you and your colleagues everything that I thought you could fairly and justly expect of me. In pursuance of that policy I believe that I can now remove the only obstacle that prevents us from signing The Hague protocol. All that is necessary, it would seem, to accomplish that purpose is to insert at the end of Article I before the words "and its decision shall be final" the words "and in making such adjudication the said tribunal shall consider any preferences or pledges of revenue enjoyed by any of the creditor powers."

That concession I consider equitable and also sufficient.

Amending, then, my draft protocol in conformity with our previous agreements and with this concession, I have rewritten the protocol and I send a copy of it to you herewith, trusting that you and your colleagues will consent to sign it with me without delay.

Believe me, etc., HERBERT W. BOWEN.

The Hague protocol, amended as stated in the preceding letter.

Whereas, etc.

ARTICLE I.

The question as to whether or not Great Britain, Germany, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the tribunal at The Hague.

Venezuela having agreed to set aside thirty per cent of the customs revenues of La Guaira and Peurto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand, and the other creditor powers on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers, and in making such adjudication the said tribunal shall consider any preference or pledges of revenue enjoyed by any of the creditor powers, and its decision shall be final.

ARTICLE II.

The facts on which shall depend the decision of the questions stated in Article I shall be ascertained in such manner as the tribunal may determine.

ARTICLE III.

The Emperor of Russia shall be invited to name and appoint from the members of the permanent court of The Hague three arbitrators to constitute the tribunal which is to determine and settle the questions submitted to it under and by virtue of this agreement. None of the arbitrators so appointed shall be a subject or citizen of any of the signatory powers.

This tribunal shall meet on the first day of September, 1903, and shall render its decision within six months thereafter.

ARTICLE IV.

The proceedings shall be carried on in the English language, but arguments may be presented in any other language also.

Except as herein otherwise stipulated the procedure shall be regulated by the convention of The Hague of July 29, 1899.

ARTICLE V.

The tribunal shall, subject to the general provision laid down in article 57 of the international convention of July 29, 1899, also decide how, when, and by whom the costs of this arbitration shall be paid.

ARTICLE VI.

Any nation having claims against Venezuela may join as a party in the arbitration provided for by this agreement.

Mr. Bowen to Baron von Sternburg.

MAY 2, 1903.

The latter part of Article I not being satisfactory to Baron von Sternburg, Mr. Bowen proposed the following amendment:

"If preferential or separate treatment is not given to the blockading powers the tribunal shall decide how the said revenues shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal in that case shall consider any preference or pledges of revenue enjoyed by any of the creditor powers, and shall so decide the question of distribution that no power shall obtain preferential treatment, and its decision shall be final."

The Hague protocol.—Italy.

Whereas protocols have been signed between Venezuela on the one hand, and Italy, Great Britain, Germany, United States of America, France, Spain, Belgium, the Netherlands, Sweden and Norway, and Mexico, on the other hand, containing certain conditions agreed upon for the settlement of claims against the Venezuelan Government;

And whereas certain further questions arising out of the action taken by the Governments of Italy, Germany, and Great Britain, in connection with the settlement of their claims, have not proved to be susceptible of settlement by ordinary diplomatic methods;

And whereas the powers interested are resolved to determine these questions by

reference to arbitration in accordance with the provision of the convention for the Pacific settlement of international disputes signed at The Hague on the 29th July, 1899;

The Governments of Venezuela and Italy, with a view to carry out that resolution, authorized their representatives, that is to say:

For Venezuela, Mr. Herbert W. Bowen duly authorized thereto by the Government of Venezuela;

For Italy, His Excellency Nobile Edmondo Mayor des Planches, His Majesty the King of Italy's Ambassador Extraordinary and Plenipotentiary to the United States of America, to conclude the following agreement:

ARTICLE I.

The question as to whether or not Italy, Germany, and Great Britain are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the tribunal at The Hague.

Venezuela having agreed to set aside 30 per cent of the customs revenues of La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers, on the one hand, and the other creditor powers, on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenue shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal, in that case, shall consider, in connection with the payment of the claims out of 30 per cent any preference or pledges of revenues enjoyed by any of the creditor powers and shall accordingly decide the question of distribution so that no power shall obtain preferential treatment, and its decision shall be final.

ARTICLE II.

The facts on which shall depend the decision of the questions stated in Article I shall be ascertained in such manner as the tribunal may determine.

ARTICLE III.

The Emperor of Russia shall be invited to name and appoint from the members of the permanent court of The Hague three arbitrators to constitute the tribunal which is to determine and settle the questions submitted to it under and by virtue of this agreement.

None of the arbitrators so appointed shall be a citizen or a subject of any of the signatory or creditor powers.

This tribunal shall meet on the first day of September, 1903, and shall render its decision within six months thereafter.

ARTICLE IV.

The proceedings shall be carried on in the English language, but arguments may, with the permission of the tribunal, be made in any other language also.

Except as herein otherwise stipulated, the procedure shall be regulated by the convention of The Hague of July 29th, 1899.

ARTICLE V.

The tribunal shall, subject to the general provision laid down in article 57 of the international convention of July 29th, 1899, also decide how, when, and by whom the costs of this arbitration shall be paid.

ARTICLE VI.

Any nation having claims against Venezuela may join as a party in the arbitration provided for by this agreement.

Washington, D. C., May 7, 1903.

HERBERT W. BOWEN.
E. MAYOR DES PLANCHES.

The Hague protocol.—Great Britain.

Whereas protocols have been signed between Venezuela, on the one hand, and Great Britain, Germany, Italy, United States of America, France, Spain, Belgium, the Netherlands, Sweden and Norway, and Mexico, on the other hand, containing certain conditions agreed upon for the settlement of claims against the Venezuelan Government;

And whereas certain further questions arising out of the action taken by the Governments of Great Britain, Germany, and Italy, in connection with the settlement of their claims, have not proved to be susceptible of settlement by ordinary diplomatic methods;

And whereas the powers interested are resolved to determine these questions by reference to arbitration in accordance with the provisions of the convention for the pacific settlement of international disputes, signed at The Hague on the 29th July, 1899;

The Governments of Venezuela and Great Britain have, with a view to carry out that Resolution, authorized their representativs, that is to say:

For Venezuela, Mr. Herbert W. Bowen, duly authorized thereto by the Government of Venezuela, and for Great Britain, His Excellency Sir Michael Henry Herbert, G. C. M. G., C. B., His Britannic Majesty's ambassador extraordinary and plenipotentiary to the United States of America, to conclude the following agreement:

ARTICLE I.

The question as to whether or not Great Britain, Germany, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the tribunal at The Hague.

Venezuela having agreed to set aside 30 per cent of the customs revenues of La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand and the other creditor powers on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal in that case shall consider, in connection with the payment of the claims out of the 30 per cent, any preference or pledges of revenue enjoyed by any of the creditor powers, and shall accordingly decide the question of distribution so that no power shall obtain preferential treatment, and its decision shall be final.

ARTICLE II.

The facts on which shall depend the decision of the questions stated in Article I shall be ascertained in such manner as the tribunal may determine.

ARTICLE III.

The Emperor of Russia shall be invited to name and appoint from the members of the permanent court of The Hague three arbitrators to constitute the tribunal which is to determine and settle the questions submitted to it under and by virtue of this agreement. None of the arbitrators so appointed shall be a citizen or subject of any of the signatory or creditor powers.

This tribunal shall meet on the first day of September, 1903, and shall render its decision within six months thereafter.

ARTICLE IV.

The proceedings shall be carried on in the English language, but arguments may, with the permission of the tribunal, be made in any other language also.

Except as herein otherwise stipulated the procedure shall be regulated by the convention of The Hague of July 29, 1899.

ARTICLE V.

The tribunal shall, subject to the general provision laid down in Article 57 of the international convention of July 29, 1899, also decide how, when, and by whom the costs of this arbitration shall be paid.

ARTICLE VI.

Any nation having claims against Venezuela may join as a party in the arbitration provided for by this agreement.

Done at Washington this seventh day of May, 1903.

HERBERT W. BOWEN.
MICHAEL H. HERBERT.

The Hague protocol.—Germany.

Whereas protocols have been signed between Germany, Great Britain, Italy, the United States of America, France, Spain, Belgium, the Netherlands, Sweden and Norway, and Mexico on the one hand, and Venezuela on the other hand, containing certain conditions agreed upon for the settlement of claims against the Venezuelan Government;

And whereas certain further questions arising out of the action taken by the Governments of Germany, Great Britain, and Italy, in connection with the settlement of their claims, have not proved to be susceptible of settlement by ordinary diplomatic methods;

And whereas the powers interested are resolved to determine these questions by reference to arbitration in accordance with the provisions of the convention for the pacific settlement of international disputes, signed at The Hague on the 29th July, 1899;

Venezuela and Germany have, with a view to carry out that resolution, authorized their representatives, that is to say:

Mr. Herbert W. Bowen as plenipotentiary of the Government of Venezuela, and

The Imperial German Minister, Baron Speck von Sternburg, as representative of the Imperial German Government, to conclude the following agreement:

ARTICLE I.

The question as to whether or not Germany, Great Britain, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the tribunal at The Hague.

Venezuela having agreed to set aside 30 per cent of the customs revenues of La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand and the other creditor powers on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal in that case shall consider in connection with the payment of the claims out of the 30 per cent any preference or pledges of revenue enjoyed by any of the creditor powers, and shall accordingly decide the question of distribution so that no power shall obtain preferential treatment, and its decision shall be final.

ARTICLE II.

The facts on which shall depend the decision of the questions stated in Article I shall be ascertained in such manner as the tribunal may determine.

ARTICLE III.

The Emperor of Russia shall be invited to name and appoint from the members of the permanent court of The Hague three arbitrators to constitute the tribunal which is to determine and settle the questions submitted to it under and by virtue of this agreement. None of the arbitrators so appointed shall be a subject or citizen of any of the signatory or creditor powers.

This tribunal shall meet on the first day of September, 1903, and shall render its decision within six months thereafter.

ARTICLE IV.

The proceedings shall be carried on in the English language but arguments may, with the permission of the tribunal, be made in any other language also. Except as

herein otherwise stipulated, the procedure shall be regulated by the convention of The Hague of July 29th, 1899

ARTICLE V.

The tribunal shall, subject to the general provision laid down in Article 57 of the international convention of July 29, 1899, also decide how, when, and by whom the cost of this arbitration shall be paid.

ARTICLE VI.

Any nation having claims against Venezuela may join as a party in the arbitration provided for by this agreement.

Done in duplicate at Washington this seventh day of May, one thousand nine hundred and three.

HERBERT W. BOWEN.
STERNBURG.

Mr. Bowen to the representatives of the allies.

WASHINGTON, D. C., *May 8, 1903.*

Their Excellencies Signor MAYOR DES PLANCHES, Sir MICHAEL H. HERBERT, and Baron VON STERNBURG.

DEAR SIRS: Our negotiations ended, I thank you for having done all in your power to conclude them expeditiously and fairly.

The work we have done will tend without doubt to promote peace and good will, not only among the governments and peoples we have represented, but also among all mankind.

With kindliest and friendliest regards, etc.,

HERBERT W. BOWEN.

AWARD OF THE PERMANENT COURT OF ARBITRATION AT THE HAGUE, A TRIBUNAL OF ARBITRATION CONSTITUTED IN VIRTUE OF THE PROTOCOLS SIGNED AT WASHINGTON ON MAY 7, 1903, BETWEEN GERMANY, GREAT BRITAIN, AND ITALY AND VENEZUELA.

The tribunal of arbitration, constituted in virtue of the protocols signed at Washington on May 7, 1903, between Germany, Great Britain, and Italy on the one hand and Venezuela on the other hand.

Whereas other protocols were signed to the same effect by Belgium, France, Mexico, the Netherlands, Spain, Sweden and Norway, and the United States of America, on the one hand, and Venezuela, on the other hand;

Whereas all these protocols declare the agreement of all the contracting parties with reference to the settlement of the claims against the Venezuelan Government;

Whereas certain further questions, arising out of the action of the governments of Germany, Great Britain, and Italy concerning the settlement of their claims, were not susceptible of solution by the ordinary diplomatic methods;

Whereas the powers interested decided to solve these questions by submitting them to arbitration, in conformity with the dispositions of the convention, signed at The Hague on July 29, 1899, for the pacific settlement of international disputes;

Whereas in virtue of Article III of the protocols of Washington of May 7, 1903, His Majesty the Emperor of Russia was requested by all the interested powers to name and appoint from among the members of the permanent court of arbitration of The Hague three arbitrators, who shall form the tribunal of arbitration charged with the solution and settlement of the questions which shall be submitted to it in virtue of the above-named protocols;

Whereas none of the arbitrators thus named could be a citizen or subject of any of the signatory or creditor powers; and whereas the tribunal was to meet at The Hague on September 1, 1903, and render its award within a term of six months;

His Majesty the Emperor of Russia, conforming to the request of all the signatory powers of the above-named protocols of Washington of May 7, 1903, graciously named as arbitrators the following members of the permanent court of arbitration:

His excellency Mr. N. V. Mourawieff, secretary of state of His Majesty the Emperor

of Russia, actual privy councillor, minister of justice, and procurator-general of the Russian Empire;

Mr. H. Lammasch, professor criminal and of international law at the University of Vienna, member of the Upper House of the Austrian Parliament; and

His excellency Mr. F. de Martens, doctor of law, privy councillor, permanent member of the council of the Russian ministry of foreign affairs, member of the "Institut de France;"

Whereas by unforeseen circumstances the tribunal of arbitration could not be definitely constituted till October 1, 1903, the arbitrators, at their first meeting on that day, proceeding in conformity with Article XXXIV of the convention of July 29, 1899, to the nomination of the president of the tribunal, elected as such his excellency Mr. Mourawieff, minister of justice;

And whereas in virtue of the protocols of Washington of May 7, 1903, the above-named arbitrators, forming the legally constituted tribunal of arbitration, had to decide, in conformity with Article I of the protocols of Washington of May 7, 1903, the following points: "The question as to whether or not Germany, Great Britain, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela, and its decision shall be final.

"Venezuela having agreed to set aside 30 per cent of the customs revenues of La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand and the other creditor powers on the other hand, and its decision shall be final.

"If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenue shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal, in that case, shall consider, in connection with the payment of the claims out of the 30 per cent, any preference or pledges of revenues enjoyed by any of the creditor powers, and shall accordingly decide the question of distribution, so that no power shall obtain preferential treatment, and its decision shall be final."

Whereas the above-named arbitrators having examined with impartiality and care all the documents and acts presented to the tribunal of arbitration by the agents of the powers interested in this litigation, and having listened with the greatest attention to the oral pleadings delivered before the tribunal by the agents and counsel of the parties to the litigation;

Whereas the tribunal in its examination of the present litigation had to be guided by the principles of international law and the maxims of justice;

Whereas the various protocols signed at Washington since February 13, 1903, and particularly the protocols of May 7, 1903, the obligatory force of which is beyond all doubt, form the legal basis for the arbitral award;

Whereas the tribunal has no competence at all either to contest the jurisdiction of the mixed commissions of arbitration established at Caracas, nor to judge their action;

Whereas the tribunal considers itself absolutely incompetent to give a decision as to the character or nature of the military operations undertaken by Germany, Great Britain and Italy against Venezuela;

Whereas also the tribunal of arbitration was not called upon to decide whether the three blockading powers had exhausted all pacific methods in their dispute with Venezuela in order to prevent the employment of force;

And it can only state the fact that since 1901 the Government of Venezuela categorically refused to submit its dispute with Germany and Great Britain to arbitration, which was proposed several times, and especially by the note of the German Government of July 16, 1901.

Whereas after the war between Germany, Great Britain, and Italy on the one hand, and Venezuela on the other hand, no formal treaty of peace was concluded between the belligerent powers;

Whereas the protocols signed at Washington on February 13, 1903, had not settled all the questions in dispute between the belligerent parties, leaving open in particular the question of the distribution of the receipts of the customs of La Guaira and Puerto Cabello;

Whereas the belligerent powers in submitting the question of preferential treatment in the matter of these receipts to the judgment of the tribunal of arbitration, agreed that the arbitral award should serve to fill up this void and to insure the definite reestablishment of peace between them;

Whereas on the other hand the warlike operations of the three great European powers against Venezuela ceased before they had received satisfaction on all their claims, and on the other hand the question of preferential treatment was submitted

to arbitration, the tribunal must recognize in these facts precious evidence of the great principle of arbitration in all phases of international disputes;

Whereas the blockading powers in admitting the adhesion to the stipulations of the protocols of February 13, 1903, of the other powers which had claims against Venezuela, could evidently not have the intention of renouncing either their acquired rights or their actual privileged position;

Whereas the Government of Venezuela in the protocols of February 13, 1903 (Art. I), itself recognizes "in principle the justice of the claims" presented to it by the Governments of Germany, Great Britain, and Italy;

While in the protocol signed between Venezuela and the so-called neutral or pacific powers the justice of the claims of these latter was not recognized in principle;

Whereas the Government of Venezuela until the end of January, 1903, in no way protested against the pretension of the blockading powers to insist on special securities for the settlement of their claims;

Whereas, Venezuela itself during the diplomatic negotiations always made a formal distinction between "the allied powers" and "the neutral or pacific powers;"

Whereas the neutral powers, who now claim before the tribunal of arbitration equality in the distribution of the 30 per cent of the customs receipts of La Guaira and Puerto Cabello, did not protest against the pretensions of the blockading powers to a preferential treatment, either at the moment of the cessation of the war against Venezuela or immediately after the signature of the protocols of February 13, 1903;

Whereas it appears from the negotiations which resulted in the signature of the protocols of February 13 and May 7, 1903, that the German and British Governments constantly insisted on their being given guaranties for "a sufficient and punctual discharge of the obligations" (British memorandum of December 23, 1902, communicated to the Government of the United States of America);

Whereas the plenipotentiary of the Government of Venezuela accepted this reservation on the part of the allied powers without the least protest;

Whereas the Government of Venezuela engaged with respect to the allied powers alone, to offer special guaranties for the accomplishment of its engagements;

Whereas the good faith which ought to govern international relations imposes the duty of stating that the words "all claims" used by the representative of the Government of Venezuela with his conferences with the representatives of the allied powers (statement left in the hands of Sir Michael Herbert by Mr. H. Bowen, of January 23, 1903), could only mean the claims of these latter and could only refer to them;

Whereas the neutral powers having taken no part in the warlike operations against Venezuela, could in some respects profit by the circumstances created by those operations, but without acquiring any new rights;

Whereas the rights acquired by the neutral or pacific powers with regard to Venezuela remain in the future absolutely intact and guaranteed by respective international arrangements;

Whereas in virtue of Article V of the protocols of May 7, 1903, signed at Washington, the tribunal "shall also decide, subject to the general provisions laid down in Article LVII of the international convention of July 29, 1899, how, when, and by whom the costs of this arbitration shall be paid;"

For these reasons the tribunal of arbitration decides and pronounces unanimously that:

1. Germany, Great Britain, and Italy have a right to preferential treatment for the payment of their claims against Venezuela;

2. Venezuela having consented to put aside 30 per cent of the revenues of the customs of La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela, the three above-named powers have a right to preference in the payment of their claims by means of these 30 per cent of the receipts of the two Venezuelan ports above mentioned.

3. Each party to the litigation shall bear its own costs and an equal share of the costs of the tribunal.

The Government of the United States of America is charged with seeing to the execution of this latter clause within a term of three months.

Done at The Hague, in the permanent court of arbitration, February 22, 1904.

N. MOURAWIEFF.
H. LAMMASCH.
MARTENS.

WARS OF VENEZUELA FROM 1898 TO 1903.—DATA COMPILED BY MANUEL LARDAETA ROSÁLES.

[Translation.]

FIRST NATIONALIST REVOLUTION, IN 1898.

This revolution began on March 2, 1898, with the publication on that day by Gen. José Manuel Hernandez of a proclamation in Queipa, in the State of Carabobo. It extended to all the States of the Republic, and ended with the capture of General Hernandez at La Vega, in the State of Yaracuy, on June 12 of the same year, after the following clashes had been recorded:

Battles	3
Skirmishes	13
Minor engagements	67
Total armed encounters	83

Loss of life to the Republic by both parties, 1,800.

In this war Gen. Joaquín Crespo, ex-President of the Republic, fell on the battlefield of Carmelora, on April 16, 1898.

General Hernandez was conveyed a prisoner to San Carlos Fortress, and remained there until May, 1899, when he was set at liberty.

For further information see the accompanying pamphlet, entitled "The Venezuelan War of 1898." [a]

REBELLION OF GEN. RAMÓN GUERRA, IN 1899.

This general, who was President of the State of Guarico, raised the cry of rebellion in that section of the Republic, issuing on February 20, 1899, a proclamation, dated at Calabozo, calling men to arms to overthrow the government of Gen. Ygnacio Andrade, raising troops in the locality which he governed (but response to this was made in Apure and Cojedes only, until the engagement at "El Morichal de Lambedero," in Guarico, on March 22, 1899, between General Guerra and Gen. Lorenzo Guevara, in which the latter was victorious, the remnants of the revolutionary forces being scattered. The war came to an end in the beginning of April through the departure of the revolutionary leader to Colombia and thence to Curaçao.

In this war the following actions took place:

Battles	1
Skirmishes	3
Surprises	1
Total armed encounters	5

In this short war there were more than 200 killed and 250 wounded in the opposing ranks.

REVOLUTION OF THE RESTORATION, IN 1899.

On April 22, 1899, Congress passed an act declaring the immediate autonomy of the twenty States of the Republic, which was put into effect by President Andrade on the 27th of the same month.

This measure, which could not legally take effect until the next term, from 1902 to 1906, furnished its standard to the revolution commanded by Gen. Cipriano Castro, who advanced to overthrow the administration of Andrade.

To this end General Castro, who was then at his country seat at Bella Vista, near Rosario de Cúcuta, in the neighboring Republic of Colombia, heedful of the plan which was being elaborated, launched himself into the conflict, invading the territory of the State of Táchira, accompanied by 60 men, on the night of May 23, 1899; and on the same day which marked his first victory, at Tonono, he issued a manifesto at Independencia, or Capacho Nuevo, taking for the standard of his armed movement the restoration of the constitution which had been violated by the high powers of the nation.

General Castro, after sundry notable feats of arms, advanced upon Mérida, where he gained another complete victory, and afterwards upon Trujillo, whose towns he threatened on the way to Barquisimeto, where he gained a victory at El Paraparo, which made him master of a large body of infantry and artillery and gave him possession of the west.

[a] Not printed in this volume.

He then continued his march in the neighborhood of the towns of Barquisimito and Yaracuy until he gained the victory at Nirgua, which placed him in a position to descend upon Carabobo and open the battle of Tocuyito on September 14, which gave him possession of Valencia, and in which action he had 1,500 men, against 6,000 in the army of General Andrade, commanded by Gens. Diego Bautista Ferrer and Antonio Fernandez.

In the course of this war Andrade raised another army of 4,000 men, in command of Gen. Luciano Mendoza, and whilst General Castro was reorganizing his forces to commence the final operations against the capital, other local movements arose in the States of Caracas, Barcelona, and Cumaná.

Whilst matters were at this pass negotiations were opened between Generals Castro and Andrade, but the latter, without awaiting their definite result, abandoned Caracas on the morning of October 20, and taking the road to the port of La Guaira, he there disbanded the 1,000 men who remained faithful to him (for he was no longer obeyed by the 4,000 under Mendoza). He departed from Barlovento for the Antilles.

Thereupon Gen. Victor Rodriguez, president of the Government council, assumed the executive power on the same day and named a ministry.

Generals Rodriguez, Mendoza, and Castro having come to terms, the triumph of the revolution of the restoration was complete, and its leader made his entrance into Caracas at 6.30 o'clock in the afternoon of October 22, 1899, assuming power on the following day as supreme chief of the Republic and appointing a cabinet.

In this war the following actions took place:

Battles	3
Sieges	1
Skirmishes	26
Minor engagements	12
Total armed encounters	42

The killed on both sides numbered 3,500, with as many more wounded.

SECOND NATIONALIST REVOLUTION, IN 1899 AND 1900.

On the day after Gen. Cipriano Castro had made his triumphal entrance into Caracas (October 23, 1899) he set at liberty the political prisoners whom the government of Andrade had placed in durance, and among them Gen. José Manuel Hernandez, leader of the first nationalist revolution.

On the same day General Castro assumed the power and named his cabinet, appointing Hernandez as minister of public works, which appointment the latter neither accepted nor declined, and at daybreak on October 27, or three days after having been set at liberty, he left Caracas by stealth, taking with him a division commanded by Gen. Samuel Acosta, companion in arms of Hernandez in the first nationalist revolution, and following first the El Valle and then the La Victoria road, he returned by way of the valleys of the Tuy, augmenting his forces with other troops which joined him on the way.

On the next day, October 28, there was circulated in Caracas a proclamation signed by Hernandez and dated on the 26th at Las Tejerias, through which place he appears to have meditated directing his march, calling upon the country to subvert the government of General Castro, and at the same time a note declining the office of minister of public works.

Pursued immediately from two directions, he was overtaken on October 30 at San Casimiro, where he was routed in the night by Gen. Natividad Mendoza, taking the Guarico road, and being twice come up with and engaged; but he then took the road to Cojedes, where he was awaited by various bodies of troops who were loyal to him, and succeeded in gathering a force of some 5,000 men, owing to the fact that the government of Castro had not only to cope with the revolution under consideration, but also with an insurrection under Gen. Antonio Paredes in Puerto Cabello, of which we shall speak hereafter.

At length, on December 14 and 15, 1899, the battle of Tacuyito was fought, in which Gens. Natividad Mendoza, Esteban C. Cardona, and Victor Rodriguez defeated Hernandez, who fell back upon Cojedes, where he was put to flight by Gen. Victor Rodriguez, in the place called Mata de Agua, returning in the direction of Portuguesa, Barinas, and Apure, crossing the river of this name, and falling upon Guayana, where he was defeated by Gen. José Manuel Paredes on March 21 and 22, 1900, in the battle of Manocal.

Hernandez then crossed the Orinoco and made his way to Guarico and thence to Cojedes, where he was captured, in the place called Tierra Negra, on May 27, entering Caracas a prisoner on the 31st of the same month, and was conducted to the rotunda and later to the fortress of San Carlos, where he remained a captive until the 11th of December, 1902, when he was set at liberty and came to Caracas to parley with President Castro.

In this campaign the actions in all parts of the Republic were as follows:

Battles	3
Skirmishes	53
Minor engagements	37
Total armed encounters	93

The losses on both sides amounted to 3,100 killed and 1,648 wounded.

INSURRECTION OF GEN. ANTONIO PAREDES IN PUERTO CABELLO IN 1899.

When General Andrade abdicated the public power on October 20, 1899, Gen. Antonio Paredes was military governor of Puerto Cabello and its fortifications, and entered into negotiations with General Castro on the inauguration of the latter's government, signing an agreement on November 3 of the same year, which instrument Paredes repudiated on the 7th because it had been signed by Gen. Benjamín Ruiz, who at that time signed himself Rafael Bolívar, the former being his true name.

Paredes fortified the town completely, and was attacked by an army under Gens. Ramón Guerra and Julio Sarria Hurtado, who engaged him victoriously on November 11 and 12, 1899.

By sea the ships of the National navy, in command of Gen. Carlos E. Echeverría, also attacked him in the town, and four steamers, respectively Dutch, English, German, and American, lay in the harbor witnessing the assault.

Paredes was taken prisoner and was brought to Caracas and lodged in the Rotunda, and thence was conveyed to the Fortress of San Carlos, where he was confined until December 11, 1902, when he was set at liberty because of the international difficulty.

The losses on both sides in Puerto Cabello amounted to 220, including a number of women and children, who were killed by the shells of the national fleet.

REVOLT OF GEN. CELESTINO PERAZA IN THE STATE OF GUARICO IN 1900.

Early in December, 1900, Gen. Celestino Peraza left Caracas bound for eastern Guarico, and on the 14th of the same month he rose in revolt at the place called La Mercedes, near the town of Chaguaramas, where he issued a proclamation inciting an insurrection against the government of General Castro.

Pursued at first by the forces of Gen. Aristides Fandeo and later by those of Gen. Carlos Echeverría, he was compelled to disband the few troops he had collected, as no response was made in other parts of the Republic, and made off toward the Colombian frontier, whence he returned in the direction of Ciudad Bolívar, where he was captured and conveyed to Fort Libertador, in which he was confined until the incident with the Allied Powers in December, 1902, when he was set at liberty.

In this revolt there were no engagements beyond two light exchanges of fire.

REVOLT OF GEN. PEDRO JULIAN ACOSTA IN THE EAST IN 1900.

On October 24, 1900, Gen. Pedro Julian Acosta raised the standard of revolt in Yrapa, and after a number of engagements in the States of Cumaná and Margarita the movement was put down early in February, 1901, Acosta falling a prisoner, and he was on the point of being shot in Carúpano.

This general held a military office on the Parian coast, and the revolution was directed from Trinidad by divers leaders who had taken refuge there.

Acosta was brought to Caracas and confined in the Rotunda, and thence was conveyed to the Fortress of San Carlos, where he still remains a prisoner.

In this revolt the following engagements took place:

In Cumaná	5
In Margarita	4
Total armed encounters	9

Losses on both sides, 360 killed.

INVASION OF GEN. CARLOS RÁNGEL GARBIRAS IN 1901.

In July, 1901, Gen. Carlos Rángel Garbiras had for sometime been harboring in Colombian territory, lying in wait for an opportunity to invade the country in the character of a revolutionist, and as Gen. José Manuel Hernandez was a prisoner in the Fortress of San Carlos, and in his stead Réngel Garbiras had been named provisional leader of the Nationalist party, he united a considerable force of Venezuelans and troops of the regular army of the neighboring Republic of Colombia (whose Government aided him) amounting to more than 4,000 soldiers, with which he invaded Táchira by way of Encontrados and by the road to the city of San Cristóbal.

In Encontrados a light clash occurred on July 28, 1901, the invading forces being commanded by Gens. Juan Marquez and José Trinidad Zuleta, and those of the Government by Gen. Regulo Olivares, which latter obtained the advantage, capturing arms, ammunition, flags, and prisoners, very few falling on either side, owing to the light encounter.

In San Cristóbal, the capital of the State of Táchira, a great battle was fought with the main body of the invading army, commanded by Rángel Garbiras in person, from July 28, at 2 p. m., until 4 p. m. on the 29th, victory resting upon the national arms under Gen. Celestino Castro, president of the State, and commander-in-chief of the army by appointment of the President, Gen. Cipriano Castro.

In this engagement 800 fell in the invading army and 350 in that of the Government, which captured from the enemy arms, ammunition, flags, prisoners, etc. Among the killed on the Government's side were several important officers.

On the 8th of August following another armed force invaded Venezuela by way of San Fanstino, but was repulsed by Gen. Rubén Cardenas at Las Cumbres.

Finally, in February of 1902, Rángel Garbiras, with other leaders and 400 soldiers, including a Colombian line battallion, once more invaded the country by way of San Antonio, as at the same time did other officers from different points, but they were all defeated in three bodies, losing arms, ammunition, flags, prisoners, and a number of dead. There also occurred the horrible murder of Col. José Miguel Crespo, his son, a nephew, and ten other companions, all of the invading army, who were slaughtered by their own comrades.

Owing to the international difficulty between Venezuela and England, Germany, and Italy, Rángel Garbiras issued a manifesto on January 9, 1903, by which it appears that he has abandoned his pretentions, but he remains a refugee in Colombia.

Gen. Horacio Ducharme, Nationalist leader in the east, was the only one who answered there the call of Rángel Garbiras, coming from Trinidad to the Parian coast, but, being hard pressed, he was forced to reembark. Ducharne issued a proclamation, dated at Caño Colorado, September 30, 1901, and his brother, Alejandro, was also in revolt during this movement until the beginning of November, when that section of the country was pacified.

INSURRECTION OF GEN. RAFAEL MONTILLA IN 1901.

In the beginning of October, 1901, Gen. Rafael Montilla rose in revolt within the jurisdiction of the State of Lara and collected a number of troops, with which he occupied Carora, where he was attacked by Gen. Rafael Gonzalez Pacheco, president of the State, who defeated him on October 25, Montilla losing 32 killed and as many more in wounded, and the Government 42 in killed and wounded.

Montilla took refuge in the mountains of Guaito, where he lay until the revolution headed by Matos gained volume, when he joined it and followed its fortunes until the end.

REVOLUTIONARY DESIGNS OF GEN. JUAN PIETRI IN 1901 AND 1902.

At the end of October, 1901, Gen. Juan Pietri left Caracas secretly, bound for La Sierra de Carabobo, with subversive designs against the government of Gen. Cipriano Castro, a proclamation of the said Pietri appearing in Caracas, dated at La Sierra de Carabobo, where it appears to have been his purpose to sound the note of insurrection.

This proclamation was dated October 22, 1901, at said Sierra de Carabobo, but the National Government being appraised of his plot, he was pursued and captured incontinently, and was brought to Caracas, where he was set at liberty in the Plaza Bolívar, while the band of revolutionists on which he had counted for the execution of his plan was routed at Guigue, in the State of Carabobo.

Pietri remained in his house, but toward the end of December of the same year he again secretly left Caracas in a hostile attitude, it is not known whether as leader for his own account or to join the marauding bands of the so-called Revolution of Liberation commanded by Gen. Manuel A. Matos; but he was captured by a number of

citizens on the night of December 31, 1901, at La Toma, near Antímano, several of his companions being wounded, and was conveyed to Caracas and thence to the Fortress of San Carlos, where he was confined until December 11, 1902, when he was set at liberty by reason of the incident with the Allied Powers of England, Germany, and Italy, and returned to his house, where he still remains.

SO-CALLED REVOLUTION OF LIBERATION FROM 1901 TO 1903.

On November 21, 1901, the minister of the interior announced in a circular that for days the Government had been aware of the existence of a revolutionary committee in Caracas, as a result of which various citizens were arrested, and also Gen. Ramón Guerra, minister of war and navy, who was at the hot baths at Agua Caliente, all of whom had acknowledged the authority of Gen. Manuel Antonio Matos, who from Paris was stirring up the insurrection and providing means for same—over which he was to preside as chief—uniting the disaffected Liberal elements and those of the Nationalist party, whose leader, Gen. José Manuel Hernandez, was a prisoner in the Fortress of San Carlos, to which Gen. Guerra was also conveyed, and in which he is still confined.

On December 19, 1901, Gen. Luciano Mendoza, provisional president of the State of Aragua, whose term of office was expiring and who was about to assume the constitutional presidency of Carabobo, to which his word was pledged, departed secretly from La Victoria. He went to Villa de Cura, collecting on the way some 300 men, whom he had caused to be in readiness for insurrection, counting upon the various uprisings which were to occur on that same day in Carabobo, Aragua, Guarico, Cojedes, Lara, and Coro, and further relying upon the German railway to aid him by delaying the dispatching of troops from Caracas in his pursuit.

The Government sent after him a detachment under Gen. J. V. Gomez, who beset him all the way to Guarico and Cojedes, finally dispersing his forces. Mendoza was compelled to remain in hiding, after losing his troops and the few supplies he carried.

At the end of December of the same year a proclamation of Gen. Manuel Antonio Matos was circulated, dated on board the steamer *Libertador*, formerly the *Ban Righ*, which was cruising in Venezuelan waters and which was declared a pirate by the national Government by decree of December 30.

There were further defeated and destroyed the guerillas of Gen. Antonio Fernandez in Aragua and the rebels in Coro, who lost everything.

Early in January, 1902, bodies of rebels began to rise in the East, relying on the support of the steamer of Matos, which was sailing the neighboring seas, aided by the authorities of the island of Trinidad.

Matters being in this situation on February 7, 1902, the steamer of Matos went into action with the national steamer *Crespo*, which latter was defeated in the waters of Cumarobo and reduced to a condition of uselessness by Matos himself, who was on board the *Libertador* aiding the uprisings in Coro, where Gen. Gregorio S. Riera landed at the point called Sauca, issuing a proclamation on February 14, and presently there begun a series of combats between the troops of Riera and those of the Government under Gen. Ramón Ayala, to whose assistance came Gen. Juan V. Gomez, Second Vice-President of the Republic and national delegate to the western States, who annihilated the rebels in Coro.

By March the east of the Republic was in arms in support of the revolution, with veteran troops commanded by Gen. Domingo Monagas in Barcelona and Gen. Nicolás Rolando in Maturín and Cumaná; and in that section were fought the tremendous battles of La Silleta in Barcelona, on March 27, in which Domingo Monagas defeated Gen. Martín Marcano, of San Agustín del Pilar, on April 2, in which Rolando was completely victorious; of Guanaguana, on April 22, in which Rolando routed the military expedition to the east conducted by Gen. Calixto Escalante, who lost everything, himself and many other officers of the Government falling prisoners. Rolando then occupied Carúpano, where, on the 6th of May, he fought a furious battle with Gen. Juan V. Gomez, who had arrived at that port with the national fleet. Gomez was wounded, and lost a large number of troops, and was forced to retire.

Shortly afterwards General Matos reached Carupano and commenced his march toward the center by way of Maturin and Carupano.

By this time Gen. Amabili Solagnie had acquired strength in the States of Lara and Yaracuy, and was winning over the southwestern States to the insurrectionary movement, coming in touch with Gen. Rafael Montilla, who had reappeared in his old haunts in the State of Lara, and with Gens. Luciano Mendoza and Francisco Batalla, who had also appeared again in the west.

On his march toward the center, Matos learned of the occupation of Ciudad Bolívar, through the treason of Col. Ramón Farreras, who defeated Gen. Julio Sarria Hurtado on May 23, gaining possession of the State of Guayana, in which serious engagements were fought at Ciudad Bolívar, San Felix, and other points, the revolution being uniformly victorious.

By now the guerillas near La Guaira, in the valleys of the Tuy and in Guarico, had been reorganized and awaited the coming of the army of the east, while in Coro General Riera obtained decisive victories, which made him master of the State, where Gen. Ramón Ayala was taken prisoner, being later conveyed a captive to the center and thereafter to Barcelona.

While these events were taking place, General Castro dispatched Gen. José Antonio Velutini to Barcelona at the head of troops to check the advance of Matos's army, and a fierce battle was fought at Aragua de Barcelona on June 30 and July 1, between the army of the east, commanded by Rolando, and the Government forces under Gen. M. Castro, the latter being defeated.

Matters being at this pass, General Castro intrusted the executive power to the Second Vice-President, Gen. Juan Vicente Gomez, and set out for the east of the Republic, but concluded that it would be better to begin operations in the center, where the army of the east was advancing, and to deal with the fresh uprisings in the Federal district and the State of Miranda.

On August 3 General Castro again set out with a considerable army for San Casimero, where he was joined by the Trujillo division, under Gen. Leopoldo Baptista, and other bodies from the Tuy, Matos being now at Orituco with more than 6,000 soldiers, beginning operations against Guarico and Aragua.

General Castro then moved rapidly to Cua, whence, owing to the defection of the troops under Gen. P. Perez Crespo, he removed to Ocumare, where he remained until the beginning of September, when he returned by the right flank to Valencia to meet the enemy in the west, who had there obtained victories which gave him the control of Coro, Barquisimeto, Cojedes, Portuguesa, Yaracuy—all this after severe encounters in Tinaquillo and its neighborhood, about the middle of September, with the revolutionary army, which was endeavoring to effect a junction with that of the east advancing under Matos. To oppose this, General Castro marched by way of Villa de Cura, and succeeded in engaging the army of the west at Masparo, on the road to Guarico, but this did not prevent the revolutionary armies from uniting their entire forces at San Sebastián.

At this juncture Castro fell back upon La Victoria and awaited the approach of the great hostile army which concentrated at that point and attacked the place, which was heroically defended by the Government forces from October 13 to November 2, when the army of Matos withdrew from the field, each group retiring toward its former positions and Matos taking passage for Curaçao.

This long and bloody conflict cost the revolution more than 1,500 in killed and wounded and the Government as many more, the former army having contained upwards of 10,000 men and that of Castro 5,500.

This disaster led many of the revolutionists to surrender themselves and enabled the Government to recover the coast and interior towns which it had lost.

While the revolution was in process of reorganization there occurred the incident with the Germans and English which induced General Castro to set the political prisoners at liberty and part of the Nationalist element to return to the ways of peace.

By the end of January the revolution had effected a reorganization in the following manner: In Orituco and Barlovento General Rolando with a considerable force; in Guarico Gen. Antonio Fernandez; in Coro Gen. Gregorio S. Riera; in Barquisimeto and Yaracuy Generals Penaloza, Solagnie, and Montilla.

The conflict with the foreign powers having been brought to a close on February 14, the revolution once more broke out, thus: The troops in Guarico were scattered as the result of a tireless pursuit and the return to peace of the Nationalists who accompanied them; Rolando came up to the gates of Caracas with a large army, but was forced to withdraw to a farther point by the action at Tacarigua, which caused him to lose his rear positions; the revolutionary forces obtained important victories in the west, etc.

At this juncture Gen. Juan Vicente Gomez marched to Barlovento and met the enemy in the great battle of El Guapo on April 13, 14, and 15, one of the most bloody engagements in the civil wars of Venezuela. Rolando retired by way of Barcelona and thence to Guayana, the State of Miranda being now free from disorder, as the rest of the rebels in the Tuy surrendered themselves. Matos, who had been sojourning in Curaçao, believing that Rolando had been victorious at El Guapo, landed on the eastern coast of Coro and joined the revolutionary forces in the west.

Then General Gomez, moving his troops by way of Tucacas with those of Gen. Pedro Linares by way of Yaracuy, and the contingent saved by Gen. Gonzales Pacheco in the State of Lara, successfully attacked the enemy along the line of the railroad, at Barquisimeto, and finally at Palo Seco, the fragments of the rebel armies in Coro, Barquisimeto, and Yaracuy melting away, while Matos, Riera, Solagnie, and others embarked for Curaçao, where they arrived on the 9th of June, and on the 11th Matos issued a manifesto declaring the war at an end.

This great revolution, which more than any other has desolated the country, was of eighteen months' duration and cost the nation more than 12,000 lives.

The engagements numbered:

Battles	20
Skirmishes	40
Minor engagements	150
Total armed encounters	210

INDEX.

A.

Page.

"Absolute equity" in protocol requires equitable application of well-established principles of international law 666
Abzueta, Delicio:
Venezuelan Secretary, Mexican Commission 879
Venezuelan Secretary, Netherlands Commission 893
Acquatella et al. case 487
Agents (*see* Officials).
Agnoli, Ruffillo, Italian Commissioner, Italian Commission 647
Opinions—
Boffolo case 697
Brignone case 710
Burelli case 655
Cervetti case 658
Corvaia case 782
De Caro case 810
Gentini case 720
Supplemental 724
Guastini case 730
Martini case 820
Massardo, Carbone & Co. case 706
Miliani case 754
Supplemental 757
Murzi case 849
Oliva case 771
Supplemental 778
Poggioli case 848
Reception of evidence and claims 651
Sambiaggio case 666
Agreement (*see* Contract):
Failure to punish infractions of criminals will make country liable for damages from acts of wrongdoers under 952
Aliens (*see* Foreigners).
Allegiance, defined 788
Alliance case 29
American Commission:
Opinions—
Alliance case 29
American Electric and Manufacturing Company case 35, 246
Anderson case 167
Bance case 172
Boulton, Bliss & Dallett case 26
Bullis case 169
De Garmendía case 10
Dix case 7
Flutie cases 38
Gage case—
Bainbridge, American Commissioner 164
Paúl, Venezuelan Commissioner 165
Barge, umpire 166

American Commission—Continued. Page.
Opinions—Continued.
Heny case—
Bainbridge, Commissioner 14
Paúl, Commissioner 18
Barge, umpire 22
Jarvis case 145
Kunhardt & Co. case—
Bainbridge, Commissioner 63
Paúl, Commissioner 70
La Guaira Electric Light and Power Company case 178
Lasry case 37
Manoa Company (Limited) case—
Bainbridge, American Commissioner 201
Grisanti, Venezuelan Commissioner 228
Barge, umpire 239
Mark Gray case 33
Monnot case 170
Orinoco Company (Limited) case—
Bainbridge, American Commissioner 201
Grisanti, Venezuelan Commissioner 237
Barge, umpire 239
Orinoco Steamship Company case—
Bainbridge, American Commissioner 73
Grisanti, Venezuelan Commissioner 76
Barge, umpire 83
Raymond case—
Bainbridge, American Commissioner 250
Grisanti, Venezuelan Commissioner 255
Roberts case 142
Rudloff case (interlocutory)—
Bainbridge, American Commissioner 183
Paúl, Venezuelan Commissioner 189
Barge, umpire 192
Spader case 161
Thomson-Houston International Electric Company case 168
Torrey case 162
Turini case—
Bainbridge, Commissioner 51
Paúl, Commissioner 54
Barge, umpire 60
Turnbull case—
Bainbridge, American Commissioner 201
Grisanti, Venezuelan Commissioner 234
Barge, umpire 239
Underhill cases—
Bainbridge, Commissioner 45
Paúl, Commissioner 45
Barge, umpire 47, 49
Upton case 172
Volkmar case 258
Woodruff case—
Bainbridge, American Commissioner 151
Paúl, Venezuelan Commissioner 154
Barge, umpire 158
Protocol 1
Rules of 5
Summary of claims 260
American Electric and Manufacturing case 35
Amnesty (*see* Pardon).
Antichresis, discussed 16, 20, 23
Appendix:
Venezuelan "Yellow Book," 1903—
First part (Germany)—
Memorandum of the minister of foreign relations of the United States of Venezuela (August 12, 1902) 955
Dr. Schmidt-Leda to Dr. Andueza Palacio (April 11, 1900) 957

Appendix—Continued. Page.
Venezuelan "Yellow Book," 1903—Continued.
First part (Germany)—Continued.
Dr. Andueza Palacio to Dr. Schmidt-Leda (May 10, 1900) 958
Dr. Schmidt-Leda to Dr. Andueza Palacio (May 30, 1900) 958
Memorandum of the imperial legation of Germany (March 8, 1901) 958
Memorandum of the minister of foreign relations (March 19, 1901) 959
Dr. Schmidt-Leda to Dr. Blanco (March 24, 1901) 962
Dr. Blanco to Dr. Schmidt-Leda (March 30, 1901) 962
Mr. von Pilgrim Baltazzi to Dr. Blanco (July 16, 1901) 963
Dr. Blanco to Mr. von Pilgrim Baltazzi (July 23, 1901) 964
Mr. von Pilgrim Baltazzi to General Pachano (December 31, 1901). 965
General Pachano to Mr. von Pilgrim Baltazzi (January 8, 1902). 965
Mr. von Pilgrim Baltazzi to General Pachano (February 13, 1902) 967
General Pachano to Mr. von Pilgrim Baltazzi (February 18, 1902) 967
Mr. von Pilgrim Baltazzi to Dr. Fombona Palacio (May 5, 1902). 967
Dr. Fombona Palacio to Mr. von Pilgrim Baltazzi (May 9, 1902). 968
Mr. von Pilgrim Baltazzi to Dr. Lopez Baralt (December 7, 1902) 969
Dr. Lopez Baralt to Mr. von Pilgrim Baltazzi (December 9, 1902) 971
Second part (Great Britain)—
Mr. Haggard to Dr. Andueza Palacio (April 30, 1900) 973
Dr. Andueza Palacio to Mr. Grant Duff (May 10, 1900) 974
Mr. Haggard to Dr. Blanco (April 25, 1901) 974
Dr. Blanco to Mr. Haggard (May 11, 1900) 975
Mr. Haggard to Dr. Blanco (May 13, 1901) 976
Dr. Blanco to Mr. Haggard (May 25, 1901) 976
Mr. Haggard to Dr. Blanco (June 8, 1901) 979
Mr. Haggard to General Pachano (December 25, 1901) 979
General Pachano to Mr. Haggard (January 4, 1902) 980
Mr. Haggard to General Pachano (January 12, 1902) 980
General Pachano to Mr. Haggard (January 25, 1902) 981
Mr. Haggard to General Pachano (January 31, 1902) 981
General Pachano to Mr. Haggard (February 6, 1902) 982
Mr. Haggard to General Pachano (February 8, 1902) 982
General Pachano to Mr. Haggard (February 14, 1902) 982
Mr. Haggard to General Pachano (February 20, 1902) 982
Mr. Haggard to Dr. Lopez Baralt (November 11, 1902) 983
Dr. Lopez Baralt to Mr. Haggard (November 14, 1902) 983
Mr. Haggard to Dr. Lopez Baralt (November 19, 1902) 984
Mr. Haggard to Dr. Lopez Baralt (December 7, 1902) 984
Dr. Lopez Baralt to Mr. Haggard (December 9, 1902) 985
Dr. Lopez Baralt to Mr. Herbert W. Bowen (December 17, 1901) 986
Note relative to the joint action of Germany and Great Britain and protocols signed in Washington by the representatives of said nations 986
Third part (Italy)—
Mr. Riva to Dr. Blanco (August 27, 1900) 988
Dr. Blanco to Mr. Riva (August 30, 1900) 988
Mr. Riva to Dr. Blanco (April 24, 1901) 990
Dr. Blanco to Mr. Riva (May 2, 1901) 990
Mr. Riva to General Pachano (April 19, 1902) 993
Dr. Fombona Palacio to Mr. Riva (April 24, 1902) 993
Mr. Riva to General Ferrer (June 28, 1902) 994
General Ferrer to Mr. Riva (June 30, 1902) 994
Mr. Riva to Dr. Lopez Baralt (December 11, 1902) 995
Dr. Lopez Baralt to Mr. River (December 13, 1902) 996
Mr. Riva to Dr. Lopez Baralt (December 16, 1902) 997
Note relative to the coercive action of Italy and the protocol signed in Washington by the representative of said nation 997
Dr. Lopez Baralt to Mr. Herbert W. Bowen (December 17, 1902). 997
Result of the debate of the National Congress on the three protocols on the 13th of February, 1903 998
Report of the high commission of foreign affairs charged with the consideration and report of the protocols signed in Washington by the commissioner of Venezuela and the representatives of Germany, Great Britain, and Italy 998

Appendix—Continued. Page.
Venezuelan "Yellow Book," 1903—Continued.
Third part (Italy)—Continued.
Mr. Velutini to minister of foreign affairs (March 30, 1903)..... 999
Resolution of Venezuelan Congress in regard to protocols (March 28, 1903) 1000
Resolution of Venezuelan Congress in regard to Italian protocol (March 28, 1903)..... 1000
"Ban Righ" (Libertador)—
Correspondence relating to the revolutionary steamer Ban Righ and to the attitude assumed by the authorities of Trinidad—
General Pachano to Mr. Haggard (December 31, 1901) 1000
Mr. Haggard to General Pachano (January 3, 1902)..... 1001
Mr. Haggard to General Pachano (January 5, 1902)..... 1001
General Pachano to Mr. Haggard with an inclosure (January 7, 1902)..... 1002
Granville to de Rojas (July 6, 1882) 1003
General Pachano to Mr. Haggard (January 14, 1902)..... 1003
Mr. Haggard to General Pachano (January 11, 1902) 1004
Mr. Haggard to General Pachano (January 17, 1902)..... 1006
General Pachano to Mr. Haggard (January 25, 1902)..... 1007
Mr. Haggard to General Pachano (January 24, 1902)..... 1010
General Pachano to Mr. Haggard (January 27, 1902)..... 1010
Mr. Haggard to General Pachano (February 6, 1902)..... 1011
General Pachano to Mr. Haggard (February 12, 1902)..... 1011
Mr. Haggard to General Pachano (February 14, 1902)..... 1012
Mr. Haggard to General Pachano (February 14, 1902)..... 1012
General Pachano to Mr. Haggard (February 28, 1902)..... 1013
Mr. Haggard to General Pachano (March 3, 1902) 1014
Mr. Haggard to General Pachano (February 25, 1902) 1014
General Pachano to Mr. Haggard (March 8, 1902) 1014
General Pachano to Mr. Haggard (March 13, 1902)..... 1015
Mr. Haggard to General Pachano (March 14, 1902) 1016
General Pachano to Mr. Haggard (March 24, 1902) 1016
Mr. Haggard to General Pachano (March 25, 1902)..... 1016
Mr. Haggard to General Pachano (March 25, 1902)..... 1016
Mr. Haggard to General Pachano (March 26, 1902)..... 1017
Mr. Haggard to General Pachano (March 27, 1902)..... 1017
General Pachano to Mr. Haggard (March 29, 1902)..... 1018
Mr. Haggard to General Pachano (March 31, 1902)..... 1018
General Pachano to Mr. Haggard (April 5, 1902) 1018
Mr. Haggard to General Pachano (April 8, 1902) 1022
Mr. Haggard to General Pachano (April 8, 1902) 1023
General Pachano to Mr. Haggard (April 11, 1902)..... 1023
Dr. Fombona Palacio to Mr. Haggard (April 24, 1902)..... 1023
Mr. Haggard to General Ferrer, with an inclosure (May 23, 1902). 1024
Mr. Moloney to Mr. Haggard (May 14, 1902)..... 1024
Mr. Haggard to General Ferrer (July 4, 1902)..... 1024
Dr. Lopez Baralt to Mr. Haggard (July 16, 1902)..... 1025
Mr. Haggard to Dr. Lopez Baralt (July 30, 1902)..... 1025
Dr. Lopez Baralt to Mr. Haggard (August 2, 1902) 1026
Mr. Haggard to Dr. Lopez Baralt (August 21, 1902) 1026
Dr. Lopez Baralt to Mr. Haggard (August 27, 1902) 1027
Dr. Lopez Baralt to Mr. Haggard (October 27, 1902)..... 1027
Dr. Lopez Baralt to Mr. Haggard (November 24, 1902) 1028
Correspondence and cablegrams relating to the Venezuelan protocols:
Mr. Bowen to Mr. Hay (December 9, 1902) 1029
Mr. Hay to Mr. Bowen (December 10, 1902)..... 1029
Mr. Bowen to Mr. Hay (December 11, 1902)..... 1029
Mr. Hay to Mr. Bowen (December 12, 1902)..... 1029
Mr. Bowen to Mr. Hay (December 13, 1902), with inclosure in regard to serving as arbitrator for Venezuela..... 1029
Inclosure 1. Dr. Baralt to Mr. Bowen (December 9, 1902)..... 1030
Inclosure 2. Mr. Bowen to Dr. Baralt (December 11, 1902)..... 1030
Inclosure 3. Dr. Baralt to Mr. Bowen (December 11, 1902)..... 1030
Mr. Bowen to Mr. Hay (December 15, 1902) 1031
Mr. Hay to Mr. Bowen (December 16, 1902) 1031

Appendix—Continued. Page.
Correspondence and cablegrams relating to Venezuelan protocols—Cont'd.
Mr. Bowen to Mr. Hay (December 18, 1902) 1031
Mr. Hay to Mr. Bowen (December 18, 1902) 1031
Mr. Bowen to Mr. Hay (December 20, 1902) 1032
Mr. Bowen to Mr. Hay (December 27, 1902), with inclosure of a petition to President Castro from the people in regard to Mr. Bowen's adjusting the difficulties 1032
Inclosure (December 16, 1902), the people to President Castro... 1032
Mr. Hay to Mr. Bowen (December 27, 1902) 1033
Mr. Hay to Mr. Bowen (December 27, 1902) 1034
Mr. Bowen to Mr. Hay (December 31, 1902) 1034
Mr. Bowen to Mr. Hay (January 6, 1903) 1034
Mr. Hay to Mr. Bowen (January 6, 1903) 1035
Mr. Hay to Mr. Bowen (January 7, 1903) 1035
Mr. Bowen to Mr. Hay (January 7, 1903), granting of powers by Venezuela to Mr. Bowen to adjust difficulties 1036
Mr. Hay to Mr. Bowen (January 8, 1903) 1036
Mr. Bowen to Mr. Hay (January 19, 1903) 1036
Mr. Bowen to Sir Michael H. Herbert (January 23, 1903) 1036
Sir Michael H. Herbert to Mr. Bowen (January 23, 1903) 1037
Mr. Bowen to Sir Michael H. Herbert (January 23, 1903) 1037
Count von Quadt to Mr. Bowen with annexed document (January 24, 1903) 1037
Document annexed 1037
Additional document presented by Count Quadt (January 24, 1903) .. 1038
Mr. Mayor des Planches to Mr. Bowen (January 24, 1903) 1038
Mr. Bowen to Mr. Mayor des Planches (January 24, 1903) 1038
Mr. Bowen's agreement respecting the 30 per cent (January 27, 1903) 1039
Mr. Bowen to Sir Michael H. Herbert (Janury 27, 1903) 1039
Mr. Bowen's objections (January 30, 1903) 1039
Mr. Bowen to Sir Michael H. Herbert (February 2, 1903) 1039
Mr. Bowen to Count von Quadt (February 5, 1903) 1040
Mr. Bowen to Baron von Sternburg (February 10, 1903) 1040
Mr. Bowen to Sir Michael H. Herbert (February 10, 1903) 1040
A concession to Germany by Herbert W. Bowen (February 11, 1903). 1040
Explanation by Michael H. Herbert of payment of £5,500 (February 14, 1903) 1041
Interpretation of protocols by Herbert W. Bowen, Michael H. Herbert, E. Mayor des Planches, and H. Sternburg (February 14, 1903) 1041
British protocol 1041
Italian protocol 1043
German protocol 1045
United States protocol 1046
Mr. Bowen's draft protocol 1048
Protocol of an agreement for the reference to the tribunal at The Hague of the question of preferential treatment 1048
Mr. Bowen to Sir Michael H. Herbert (March 19, 1903) 1048
Sir Michael H. Herbert to Mr. Bowen (March 20, 1903) 1049
Mr. Bowen to Sir Michael H. Herbert (March 20, 1903) 1049
Sir Michael H. Herbert to Mr. Bowen (March 20, 1903) 1049
Mr. Bowen's draft protocol as amended by Sir Michael H. Herbert (received April 2, 1903) 1049
Mr. Bowen to Sir Michael H. Herbert (April 2, 1903) 1050
Sir Michael H. Herbert to Mr. Bowen (April 3, 1903) 1052
Mr. Bowen to Sir Michael H. Herbert (April 3, 1903) 1052
Mr. Bowen to Sir Michael H. Herbert (April 25, 1903) 1052
Mr. Bowen's amendment of The Hague protocol 1052
Mr. Bowen to Baron von Sternburg (May 2, 1903) 1053
Italian protocol for The Hague 1053
British protocol for The Hague 1055
German protocol for The Hague 1056
Mr. Bowen to the representatives of the allies (May 8, 1903) 1057
Award of Hague Court on preferential treatment (February 22, 1904) 1057
Wars of Venezuela from 1898–1903 1060
Arbitrations, between Italy and Venezuela relative to civil war of 1892, discussed ..... 849, note

Page.
Arends case 912
Army (*see* War):
Respondent Government held responsible for attempts to enlist in her, in violation of contract, citizens employed by claimant 820
Government not responsible for acts of troops without officers 910
Arnal, José I.:
Assistant Venezuelan agent, Netherlands Commission 893
Assistant Venezuelan agent, Spanish Commission 921
Aroa Mines (Limited) case 344
Arroyo-Parejo, F.:
Venezuelan agent, American Commission 5
Answer, Orinoco Steamship Co. case 107
Venezuelan agent, Belgian Commission 265
Answer by, in case of Compagnie Générale des Eaux de Caracas (jurisdiction) 272
Compagnie Générale des Eaux de Caracas (on merits) 276
Venezuelan agent, British Commission 295
Venezuelan agent, Mexican Commission 879
Venezuelan agent, Netherlands Commission 893
Venezuelan agent, Spanish Commission 921
Venezuelan agent, Swedish Commission 949
Assignees, for benefit of creditors, considered purchasers for value and entitled to recover, although claim originally not entirely German 597
Assignment, without notice to Government and against stipulation in concession, void 73
Award:
Does not carry interest under protocol 520, 658
Semble that damages after last date for presentation of claims under ordinary circumstances, not recoverable in 820
Where damages are continuous may be included in, up to its date 820
Of Hague Permanent Court in preferential question 1057
Ayala, Gaytán de Ramón:
Umpire, Mexican Commission 879
Opinion, Del Rio case 882
Umpire, Swedish Commission 949
Opinions—
Bovallins case 952
Christina case 949
Hedlund case 952
Azpurúa, Pedro Vicente:
Venezuelan Commissioner, Belgian Commission 265
Venezuelan Commissioner, British Commission 295

B.

Baasch & Römer case 906
Bainbridge, William E., American Commissioner, American Commission 5
Opinions—
Alliance case 29
Anderson case 167
Bullis case 169
De Garmendía case 10
Dix case 7
Flutie cases 38
Gage case 164
Mark Gray case 33
Heny case 14
Jarvis case 145
Kunhardt case 63
La Guaira Electric Light and Power Company case 178
Lacry case 37
Manoa Company (Limited) case 201
Monnot case 170
Orinoco Company (Limited) case 201
Orinoco Steamship case 73
Raymond case 250
Roberts case 142

Page.
Bainbridge, William E., American Commissioner, etc.—Continued.
Opinions—Continued.
Rudloff case (jurisdiction) 183
Spader case 161
Turini case 51
Turnbull case 201
Underhill cases 45
Upton case 172
Volkmar case 258
Woodruff case 151
Ballistini case 503
Bance case 172
Bankruptcy:
Individual creditor of bankrupt not received as claimant for injury to bankrupt's property 172
Receiver in, only acts as administrator, and individual credits not private property of creditor 172
Barcelona, history of recent sieges of 838
Barge, Charles Augustinus Henri, umpire, American Commission 5
Barge, umpire:
Opinions—
American Electric and Manufacturing Company case 247
Gage case 165
Heny case 22
Manoa Company (Limited) case 239
Orinoco Company (Limited) case 239
Orinoco Steamship Company case 83
Rudloff case (Jurisdiction) 192
Turini case 60
Turnbull case 239
Underhill (G. F.) case 47
Underhill (J. L.) case 49
Woodruff case 158
Becker & Co. case 520
Beckman & Co. case 598
Belgian Commission:
Opinions—
Compagnie Générale des Eaux de Caracas (jurisdiction)—
Goffart, Belgian Commissioner 272
Grisanti, Venezuelan Commissioner 274
Filtz, umpire 275
Compagnie Générale des Eaux de Caraças (merits)—
Goffart, Belgian Commissioner 278
Grisanti, Venezuelan Commissioner 283
Filtz, umpire 289
Paquet case (expulsion) 265
Paquet case (concession)—
Goffart, Belgian Commissioner 267
Grisanti, Venezuelan Commissioner 268
Filtz, umpire 269
Postal claim—
Goffart, Belgian Commissioner 270
Grisanti, Venezuelan Commissioner 270
Filtz, umpire 271
Personnel 265
Protocol 261
Summary of claims 291
Bembelista case 900
Betancourt case 939
Bignoso case 753
Bischoff case 581
Blanco, Luis Julio:
Venezuelan Secretary, Spanish Commission 921
Venezuelan Secretary, Swedish Commission 949
Blockade (*see* Closure of ports):
Closure of ports by Government in rebel territory does not constitute, unless rebels are recognized as belligerents 73

Blockade—Continued. Page.
Ineffective, can not be declared by Government against ports in hands of revolutionists 331
Must be forcible to sustain closure by Government, of ports in hands of insurgents 586
Paper, or by proclamation, is illegal 810
Ineffective, rule of convention of Paris of 1854 with relation to ..... 842, note
Boffolo case 696
Bolívar Railway Company case 388
Bombardment:
Claim for, disallowed as for legitimate consequence of war 35
Cities offering resistance may be bombarded 318
General rule is that, of an open city is not admissible 900
Bonds:
For services in supporting unsuccessful revolutions can not be enforced 145
Original holder of, although payable to bearer, may be heard before Commission 271
Evidence not admissible that, purporting to be issued at par, were delivered at less 272
Payable to bearer should be produced by claimant 275
Claim for, disallowed for want of proof of ownership 503
Can not be subject of international claims 505
Recognized as subject of international claims ..... 505, note.
Bottaro case 768
Boulton, Bliss & Dallett case 26
Bovallins case 952
Bowen correspondence (*see* Appendix) 1029–1057
Brewer, Moller & Co. case 584
Brewer, Moller & Co. case (second) 595
Brignone case 710
British Commission:
Opinions—
Aroa Mines (Limited) case 344
Bolívar Railway Company case 388
Cobham case 409
Compagnie Générale des Asphaltes case 331
Crossman case (interlocutory) 298
Davis case 402
Davy case 410
De Lemos case—
Grisanti, Venezuelan Commissioner 302
Plumley, umpire 306
Diplomatic debt case 423
Feuilletan case 406
Kelly case 340
Mathison case 429
On motion for interest 413
Puerto Cabello and Valencia Railway Company case 455
Santa Clara Estates Company case 397
Selwyn case 322
Stevenson case—
Grisanti, Commissioner 440
Plumley, umpire 442
Stevenson case 327
Topaze case 329
Personnel 295
Protocol—
Of February 13, 1903 292
Of May 7, 1903 294
Summary of claims 480
Bullis case 169
Business injury (*see* Injury):
No damages allowed for, as result of war 14

C.

Calcáño-Sanavria, Eduardo, Venezuelan Secretary (American Commission) 5
Ceballos, Bartolomé López de, Mexican Secretary, Mexican Commission 879

Page.
Cervetti case 658
Cesarino case 770
Christern & Co. case 520, 584
Christern & Co. case (second) 597
Christina case 949
Citizenship (*see* Nationality and Conflict of laws):
Citizens of claimant country are recognized to claim interest in dissolved corporation of respondent country 63
Law can not be given retroactive effect to create 429
Claims must be of those who were citizens at time of origin and signing of protocol, unless changed by treaty 72
In cases of double, law of domicile governs 429
A woman acquires husband's, by marriage, but on widowhood is subject to law of domicile 438
Those born on British soil are British subjects, and can claim 438
Military service does not affect, and is not equivalent to formal naturalization 438
Opinion, evidence as to, held incompetent 562
Proof of, of those interested in successions required 706
In the event of conflict of laws creating double, that of respondent nation must control 710
In cases of double, neither country can claim against the other, although it may as against all other countries 754
Of Two Sicilies lost, by accepting diplomatic employment from Venezuela. 782
Lost, by leaving country without intention to return 807
Of widow and children born and domiciled in respondent country, controlled by law of domicile 847
Civil commotions (*see* Revolution).
Civil war (*see* Government; Revolution).
Claim (*see* Citizenship; Claimant; Claims; Concession; Contract; Damages; Government; Jurisdiction):
Equitable demands may be received as 26
Interest allowed on, from date of presentation 29
Disallowed for damages for want of towing facilities resultant upon Government's use of only towboat 33
Allowed for property taken by Government for military purposes and damaged in its possession 35
Disallowed for bombardment as necessary consequence of legitimate war.. 35
Allowed for unlawful detention by refusal to furnish passport 45
Disallowed for failure to prove succession in interest 45
Allowed for as to work done, although violated by both parties 51
Destruction of neutral property by soldiers with authorization or in presence of negligent officers creates 63
Allowed for wrongful annulment of concession 63
None exists for refusing right to navigate waters to those believed by Government to be rebel sympathizers 73
Must be of nationality of claimant Government at time of origin 74
Allowed for acts of violence committed by troops when under command of officers 142
Duly presented not barred by delay in settlement 142
For payment of bonds for services rendered in unsuccessful revolution can not be enforced against Government 145
Rights unasserted for forty-three years can hardly be called 161
Allowed for back payment and work done under contractual obligation .. 174
For breach of contract by municipal corporation disallowed against Government 178
What may constitute basis of 189
Pending before local courts can not be submitted to international tribunal. 190
For repayment from Government for rights Government could not concede and whose enjoyment it prevented allowed with legal interest from time of payment 201
May be made for breach of collateral promise in international tribunals, notwithstanding contract providing for submission under, to local courts. 246
Breach of promise to do any legal act can not be made basis of 246
None exists for neutral property accidentally destroyed in war 258
Interest upon, not allowed if not demanded in 270

Claim—Continued. Page.
Not barred by prescription without laches of claimant or his Government, in presentation for payment 327
Expenses of translations in preparation of, allowed 331
Not allowed for acts of unsuccessful revolutionists 344
Defined 344
Allowed for taxes once paid to de facto revolution, and again collected by Government 397
Can not be maintained against Government, when it is made possible by claimant's negligence 402
For interest on amount of wages allowed 406
Dismissed without prejudice, because unskillfully prepared 409
Allowed for acts of officials whether commissioned by national, state, county, or municipal authorities, unless speedily punished 410
Nationality of, not changed by death of claimant after presentation 439
Must be of same foreign nationality at time of origin and presentation ... 449
Not allowed for damages suffered by property in track of war 455
For outstanding bonds disallowed for want of proof of ownership 503
Sustained against Government for supplies furnished constitutional state. 503
International bonds can not be subject of 505
Internal bonds received as subject of ..... 505, note.
Allowed for forced loan made by constituent state for benefit of Government 598
Defined 651
Illegal refusal of amparo by superior judge and procurador-general will sustain, for denial of justice 764
None can be maintained for services rendered by ships of Colombia, where contract provides for payment from date of departure from Colombian ports for Mexico, they never having departed until after time for which claim is made for their services 880
Of individual against Government, does not become international until demand on debtor Government 880
Sustained for maintenance of prisoners left on claimant's estate, without his permission and without food 904
Allowed for property taken or destroyed without claimant's consent, at price not extortionate fixed by him 904
Dismissed for want of proof of nationality of other members of firm and their respective interests therein 910
Dismissed, where respondent Government sets out that claim is Venezuelan, and no contradiction is interposed by claimant Government 910
Evidence to support it being too vague to enable Commission to determine amount, will be dismissed 937
Claimant (*see* Citizenship; Claim; Claims):
Stockholder of existing corporation can be 63
Participation in revolutionary movement to destroy rights of, must be proved beyond reasonable doubt 340
Not compelled to resort to local courts for redress before appealing to his Government 410
Does not lose his status as foreigner by military service in Venezuela 438
Death of, does not change national character of claim 439
Must be of same foreign nationality at time of origin and presentation of claim 449
May recover profits under broken contract when not uncertain or remote, but reasonably presumed within intent and understanding of parties ... 820
Nationality of, shown by certificate of consul 922
Born on British soil are British subjects and can claim before Commission 438
Appearing before Commission accept its limitations 665
Claims (*see* Citizenship; Claim; Claimant; Damages; Jurisdiction; Summary of claims):
Must belong to those who were citizens of claimant country at time of origin and date of protocol 72
For use by Government of property held under assignment void as against Government are enforceable 73
Must belong to citizen of claimant Government at time of origin 76
Jurisdiction of Commission over unsettled, discussed 144
"Owned" refers in American protocol to its date 161

Claims—Continued. Page.
Commission has no jurisdiction to decide, against municipalities..... 168
For loss disallowed, no sufficient evidence of value of concession being submitted 183
For costs disallowed 406
Sustained for wages not positively proven to have been paid by Government 406
Under protocol, do not carry interest until they are paid..... 413
For damages to property carry interest..... 425
For personal injury do not carry interest as such 520
Upon contract in which rate of interest is stipulated, carry interest from date of breach..... 520
For wrongful seizure of or injuries to property, bear interest from date of demand for payment of damages 520
For damages to decedent surviving to his estate, controlled by law of domicile..... 578
May be made under law of Venezuela, by heirs for personal injuries to decedent but not to his personal feelings or reputation 578
Meaning of protocol as to extending time for submission of..... 582
Only legal rate of interest as provided by Venezuelan laws allowed on ... 632
Under protocol, time for filing may be extended for reasonable cause shown. 648
Not presented in time, through fault of respondent Government, will be dismissed without prejudice..... 655
Interest on, only allowed in absence of contract, from date of presentation to Government or Commission..... 658
Founded on wrongful acts of minor public officials should be clear and definite and show unavailing appeal to superior authority to justify recovery..... 693
Jurisdiction may be taken of, arising in 1898–1900, not included in Italian claims of "first rank" 706
Jurisdiction of Commission recognized over, originating at least before date of protocol 709
Secret, first presented thirty years after supposed inception, may be rejected 720
Equity forbids recognition of stale and secret..... 720
International, can not be defeated by local laws of prescription..... 720
Italian, must be such when they arose and when they were presented ... 720
Must be of subjects of claimant nation in their origin and when claims Commission was formed 782
"Most-favored-nation" clause only operates as to those, thereafter arising. 782
Right of nation to submit, of its citizens to Mixed Commission is superior to attempt on part of subject or citizen to contract it away 819
Allowed for interference with foreign workmen by respondent Government. 820
Ordinarily, semble not recoverable for damages after last date for presentation of..... 820
Where damage is continuous, may be made for loss up to date of award.. 820
Not allowed for injuries received in the course of battle..... 900
Interest on, at legal rate allowed on, after expiration of one year from the time Government had notice..... 906
Under terms of protocol, no general extension allowed for presentation of. 921
Protocol, canceling pending Spanish, will not extinguish debt Venezuela has admitted and promised to pay to Spanish subject..... 936
Liquidated debt not relinquished by stipulation of treaty canceling pending. 939
Allowed for acts of wrongdoers where state fails to prosecute them..... 952
Clearance, damages allowed for wrongful refusal of..... 501, 503
Closure of ports (*see* Blockade):
By Government during revolt, not blockade unless rebels are recognized as belligerents 73
Government responsible for, where their being kept open is material element of value of contract made by it 820
In hands of revolutionists, can not be authorized by governmental order or decree 331
No allowance for damages from, in absence of contract relations between Government and claimant 848
Cobham case..... 409
Colombia, division between, and Venezuela and Ecuador of debts of old Republic of Colombia 881

Page.
Commission (*see* Jurisdiction):
Has no power not directly conferred by protocol 421
Can not decide claims of British nation as such, against Venezuela 438
Controlled by international law 386
Common law, strict rules of evidence of, not followed 37
Compagnie Générale des Asphaltes case 331
Compagnie Générale des Eaux de Caracas 271
Compromise, claimant can not accept benefit of, of original claim and reserve right of action for steps taken to enforce it 819
Concession (*see* Contract):
Damages may be awarded for wrongful annulment of 63
Providing against resort to international tribunals is effective 73
Of exclusive right to use, for foreign commerce, waterways reserved for coastwise trade does not prevent opening for commerce 73
No sufficient evidence as to value of, claim disallowed 183
Distinction between permit and 268
Indirectly taken away by unlawful expulsion, may be compensated for .. 771
Measure of damages for unlawful deprivation of, limited to amounts properly expended in procuring it, speculative and conjectural profits being rejected 771
Conflict of laws (*see* Citizenship; Domicile):
Between international and local, international rules 378
In case of, citizenship of widow is controlled by laws of her domicile 438
In the event of, creating double citizenship, that of respondent nation must control 710
In case of, as to distribution of estate, law of domicile of decedent must control 710
As to citizenship of widow and children of citizen of foreign country, controlled by law of domicile 847
Consequential damages (*see* Damages):
Construction of treaties (*see* Interpretation; Treaties):
Consul:
Can not certify to evidence in his favor 318
Can not refuse clearances for his country because of refusal of his Government to give him permission to do so, based on insufficient reason 331
Can not collect customs duties abroad 331
Can not demand procurement of passport by ship's captain as condition precedent to clearing 331
Certificate of, admissible as evidence 600
Certificate of, accepted as showing nationality 922
Consular certificate (*see* Consul):
Admissible as evidence 600, 922
Contract:
Award made under implied 26
Damages for work done allowed, although violated by both parties 51
Subsequent to further and illegal, is in violation of law 145
Provision that questions arising under, shall be referred to local courts and never made subject to international claim is binding, and without showing such resort and delay or denial of justice, can not be considered by International Commission 151
Commission has no jurisdiction to compel Government to acknowledge claimant's performance of 172
Claim for breach of, by municipal corporation disallowed against Government 178
Entered into by minister of public works and authorized by Chief Executive is, of Government 183
Party to a, can not declare it void, but must apply to courts to have it set aside 200
Providing for submission of disputes to local courts, where inequitable jurisdiction is entertained by Commission 182
Providing that questions under it must be decided by local courts, remains existing until declared void by them 201
Second, to take effect when first became void is valueless until first is declared inoperative by local tribunals 201
Government party to, can not declare it void 213
Providing for a settlement by local courts of questions under, does not prevent claim in international tribunal on collateral promise 246

Contract—Continued. Page.
Stipulating a certain rate of interest, carries that rate from date of breach. 520
Agreement by Government to indemnify railroad for carrying troops and munitions of war is void as against public policy 632
Of citizen to refer disputes to local courts is inferior to right of sovereign power to submit claims, to Mixed Commission 818
Respondent nation held responsible for attempts in violation of her, to enlist citizens employed by claimant 820
Respondent nation held responsible for profits claimants might have obtained had she not broken her, where such are not uncertain or remote, but reasonably presumed within intent and understanding of parties... 820
To be interpreted in light of surrounding circumstances 820
Provisions against international claims under, invalid 186
Attempt by Government to annul, providing for submission of questions under it to local courts is illegal 246
Not responsible for, incurred by authorities of an unsuccessful revolution. 896
Convention of Paris of 1854, rule of, as to ineffective blockade ..... 842, note.
Corcuera case 936
Corporation:
Stockholders are not coowners of property of 63
Stockholders have no claim on respondent Government during its existence 63
Citizens of claimant country, stockholders in dissolved corporation can claim equitable share of assets 63
Without proof of liabilities of dissolved corporations no equitable claim can be sustained 63
Right of creditors and stockholders to property of, not destroyed by dissolution or liquidation 63
Stockholders' interests on dissolution become equitable rights to proportionate shares of property 63
Take nationality of government creating, although some stockholders are foreigners 271, 273, 275
Is citizen of country where formed 275
Jurisdiction of International Commission over claims of, controlled by its nationality and not that of stockholders 906
Discussion as to nationality of corporations ..... 906, note.
Corvaia case 782
Costs:
Counsel fee disallowed as 73
Expenses of translations in preparation of claim allowed 331
Of claim disallowed 406
For preparation for suit disallowed 562
Counterclaims for damages on part of Venezuela unfixed in amount and not its property, can not be set up against claimants who have only assumed liability of Mexico for, of Venezuela 880
Counsel fees, disallowed 73
Creditors of bankrupt can not claim individual credits as private property before Commission 172
Crops:
For loss of, under special circumstances not allowed 562
Allowance made for destruction of, by agents of Government together with unpunished malefactors 848
Crossman case (interlocutory) 298
Custom-house:
Registry; prima facie evidence only as to ownership 29
Damages allowed for wrongful refusal by, to clear vessel 501, 503
Customs duties, can not be collected abroad for Venezuela by Venezuelan consul. 331

D.

Damages:
Government responsible for proximate and natural consequences of its acts 7
Foreigners entitled to same compensation for, as nationals 10
For destruction of property for public benefit 10
Measure of, is loss of benefit to claimant 12
Allowed against wrongdoer on unrecorded instruments 14
Not allowed for interruption of business where war exists 14
Will be allowed for unlawful detention of weather-bound vessel 29

Damages—Continued. Page.
Government responsible for property seized for military purposes and damaged in its possession 35
Allowed for unlawful detention by refusal to furnish passport 45
Allowed contractor's successors in interest, for work done where both parties violated contract 51
Allowed for work done although contract violated by both parties 51
Measure of, for performance of contract if prevented, is difference between contract price and price of completion less sums paid 53
Awarded for wrongful annulment of concession 63
In addition to actual, allowed for losses necessarily contemplated 142
Allowed for personal inconvenience during period of arrest 162
Punitive, not allowed for mistaken arrest where apology promptly follows. 162
Allowed for insults and threatened illtreatment under lawful arrest 164
Government responsible for wrongful seizure of property without reasonable inquiry 170
Consequential, discussed 183
Contract providing for decision of questions under it under laws of Republic and by local tribunals, application to local courts must be made before, can be obtained 200
None lie for breach of second contract improperly signed before first with other parties was declared void 201
For breach of collateral promise entertained, notwithstanding clause in contract providing for settlement of controversies under it by local courts 246
Allowed to person who, under permit from Government, makes expenditure if permit be revoked without sufficient reason 267
Can not be claimed by foreigner against Government for unavoidable acts of war 303
Measure of, for imprisonment discussed 329
Not allowed for injury to persons or property or wrongful seizure committed by unsuccessful revolutionists 344
Awarded for wrongful acts of officials whether commissioned by national, state, county, or municipal authorities, unless speedily punished for their acts 410
Interest allowed on claims for, to property 425
Not allowed for injury to property in track of war 455
Allowable for acts of unsuccessful revolutionists 487
Not allowed for acts of unsuccessful revolutionists 487
For unlawful imprisonment 497
Allowed for wrongful refusal of clearance 501, 503
Allowed for wrongful imprisonment 503
For loss of crop because of drafting of laborers, held remote and disallowed. 562
Allowed under protocol for acts of revolutionary troops 562
Not allowed for acts of unsuccessful revolution 565
Allowed under protocol for acts of unsuccessful revolution 574
Claims for, to decedent surviving to his estate, controlled by law of domicile 578
Allowed for unreasonable detention of property and injuries resultant where original taking was lawful 581
Measure of, for prevention of employment of vessels 588
Measure of, for prevention of working of mines 589
State does not assume responsibility for, committed by persons pardoned by chief executive in excess of his powers 590
Not allowed for suspension of railroad traffic because of military necessities 632
Not allowed for, caused by guerrillas 632
Can only be accorded by international tribunals to citizen or subject of claimant country, taking no account of offenses to nation as such 754
Government liable for, resulting from so taking possession of property as to specially expose it to destruction 762
Elements of, for unlawful killing discussed 769
Allowed for expulsion under circumstances of contumely and upon mere suspicion 771
For indirect loss of concession limited to amounts properly expended in procuring, speculative and conjectural profits being rejected 771
Refused for acts of unsuccessful revolution 810
Where continuous in nature, allowed to date of award 820

Damages—Continued. Page.
Semble that ordinarily, after last date for presentation of claims, not recoverable 820
Government held responsible in, under contract for wrongful closure of ports against provisions of contract made by it 820
Respondent nation responsible for, inflicted on property of foreigner where known offenders were allowed to go unpunished and authorities in conjunction with them and others have depredated his property without relief 847
Refused for general claim for loss of credit 847
To crops allowed for consequent upon acts of agents of government together with unpunished malefactors 848
None allowed for closure of port in absence of contract relations between government and claimant 848
Where money loaned is procured at a premium, unpaid amount of premium will be allowed as resultant 879
Claim for, on part of Venezuela, not fixed in amount and not its property, can not be set up as counterclaim against claimants only assuming liability of Mexico, for counterclaims of Venezuela 880
Awarded for property taken or destroyed, at price not extortionate, fixed by claimant 904
Will be allowed for unwarranted acts of officials which have not been punished 914
Interest at 5 per cent on principal award for, from date claimants were proved to have been in their right 949
Allowed for acts of wrongdoers where country has failed to prosecute them 952
Measure of, for unlawful imprisonment indicated 952
Daniel case 507
Daumen case 520
Davis case 402
Davy case 410
Death:
Of claimant will not change national character of claim 439
Claim of life-insurance company for amount paid on account of, disallowed 954
Allowance for 954
Allowance to owner of vessel made for unlawful killing of captain 954
De Caro case 810
Decauville Company case 499
De facto government (*see* Government), defined 899
Definitions:
Allegiance 788
Claim 161, 344, 651
De facto government 899
Equity 344
Eventually 649
Injuria 733
Injury 344, 558, 660
International law 386, 555
Italian claims 720
Jurisdiction 75
Justice 344
Laches 406
Local legislation 81, 595
Negligence 406
Net earnings 466
Owned 72, 77, 167
Present Venezuelan civil war 565
Property 188
Seizure 344
Technical objections 595, 719
Wrongful 558
Wrongful seizure 298, 302
De Lemos case 302
Delgado y Olazabal, José Gil, Spanish Secretary, Spanish Commission 921
Del Muni, Marquis, umpire, French Commission (of 1902) 496
Del Rio case 879

Page.
De Garmendía case 10
Demand:
Necessary in order to start the running of interest for breach of contract.. 520
Not necessary to stay prescription where Venezuelan authorities were notified of taking of proof and assisted therein 765
Where debt is to be paid at specific time debtor not bound to make, in order to create default 880
Denial of justice:
Without, international tribunal can not consider contract providing for reference to local courts 151
Ordinarily necessary in cases of breach of private contract to give Commission jurisdiction 182
Illegal refusal of amparo by superior judge and procurador-general will sustain claim for 764
May be by administrative authority as well as judicial 869
Exists when a state refuses to punish offenders against a foreigner because he is such 867
Commission can not correct abuse of process in closed judicial proceedings where claimant might have applied to court for relief but did not 810
Appointment of wrongdoers to office who must be appealed to for redress of their actions constitutes 952
De Zeo case 693
Di Caro case 769
Diplomatic debt case 423
Diplomatic employment:
Respondent nation, knowing that subject of claimant nation abandons original citizenship by accepting its, claimant nation is estopped from claiming him as a subject 782
Subject of Two Sicilies loses citizenship by accepting, from Venezuela.... 782
Diplomatic intervention, not necessary to appeal to local courts before asking 410
Dismissal (*see* Dismissal without prejudice; Procedure):
Where respondent Government sets out that claim is of Venezuelan origin and domicile, no contradiction being interposed by claimant Government, claim dismissed for want of jurisdiction 910
Dismissal without prejudice (*see* Dismissal; Procedure):
Allowed for unskillful preparation of claim 409
Allowed where Commission has no jurisdiction 439, 782
Documents (*see* Evidence; Procedure):
Under protocol, Commission bound to consider all, submitted by either Government 930
Where, can not be produced statements of witnesses accepted 952
Dolge, Rudolf, American Secretary 5
Domicile (*see* Conflict of laws):
Defined 43
Law of, governs in case of double citizenship 429
Controls citizenship of widow who had acquired her husband's, by marriage 438
Law of, rules as to class of claims for damages to decedent surviving to his estate 578
Of decedent must control in distribution of estate, in case of conflict of laws 710
Controls citizenship of widow and children of foreign citizen, who have always lived in respondent country 847
Double payment of taxes (*see* Taxes).
Doyle, W. T. Sherman:
Assistant American agent 5
Netherlands agent, Netherlands Commission 893
Draft, guarantee of constitution against, held duly suspended in absence of proof of irregularity 562
Duffield, Henry M.:
Umpire, German Commission 518
Opinions—
Becker & Co. case 520
Beckman & Co. case 598
Bischoff case 581
Brewer, Moller & Co. case 584

Duffield, Henry M.—Continued. Page.
Opinions—Continued.
Brewer, Moller & Co. case (second) 595
Christern & Co. case..... 520, 584
Christern & Co. (liquidators) case..... 597
Daumen case..... 520
Faber case..... 620
Flothow case..... 582
Friedericy case..... 520
Fischbach case..... 520
Great Venezuelan Railroad case..... 632
Kummerow et al. cases 549
Kummerow case 520
Metzger case..... 578
Mohle case..... 574
Orinoco Asphalt case 586
Plantagen Gesellschaft case 631
Richter case 575
Valentiner case..... 562
Van Dissel & Co. case 568
Wenzel case 590
Duret, Fernando, Mexican Commissioner, Mexican Commission..... 879
Duties can not be collected under Venezuelan laws, on exportations of Venezuelan products 810

E.

Earnings, net, defined 466
Echeverriá, Fernando G., umpire's secretary, German Commission..... 518
Ecuador, division between, and Colombia and Venezuela of debts of old Republic of Colombia..... 881
Equitable demands (*see* Equity; Claim).
Equity:
Equitable interest of claimant in assets of dissolved corporation recognized..... 63
Contract provisions requiring submission of disputes to local courts being inequitable under the circumstances, jurisdiction is taken 182
Application of rule of absolute, discussed and jurisdiction taken, notwithstanding provision of contract for submission of disputes to local courts. 182
Compels allowance to person, who, under governmental permit, spends time and money, permit being revoked without sufficient reason..... 267
Defined..... 344
Does not permit claimant to recover when his negligence renders loss possible 405
What "absolute" requires..... 666
Local legislation operating against, must be rejected under protocol..... 719
Forbids recognition of stale and secret claims..... 720
Defense that injuries were inflicted by persons in revolt is inequitable ... 923
Tribunals called upon to decide on basis of absolute, must render judgment according to conscience of arbitrators..... 924
Esteves case..... 922
Estoppel:
Operates to prevent a man, and consequently his heirs, who accepts, without permission of his government and against her laws, public employment from another nation, from claiming his prior condition to prejudice of employing nation..... 782
Operates against claimant nation where its subject as against its laws forfeiting its citizenship, accepts foreign diplomatic employment..... 782
Eventually, defined..... 649
Evertsz case..... 904
Evidence:
Custom-house registry prima facie evidence only as to ownership of vessels. 29
Strict rules of common law not followed..... 37
Unsworn statement, informal declaration, etc., receivable..... 37
Certificate of naturalization prima facie only 38
Claim disallowed for failure to prove succession in interest 45
Decision of foreign government as to de facto character of another government has great weight as to fact, and is conclusive upon its own citizens. 145

Evidence—Continued. Page.
In absence of, as to value of concession claim disallowed 183
Can not be introduced to show that bonds purporting to be issued at par were delivered at less than nominal value 272
Consul can not certify to evidence in his favor 318
Written statement received as, under protocol 321
Of participation in revolutionary movement must be beyond reasonable doubt, to destroy claimant's rights 340
Technical rules do not obtain in international tribunals 380
Government held liable for employment, not positively proving payment of wages 406
Opinion of witnesses as to nationality held incompetent 562
Query as to acceptance against government of statement of revolutionary authorities 574
Acceptance of, given in other cases 574
Hearsay, discussed 576
What papers and documents are receivable as, before international tribunals ..... 600, note.
International tribunals not bound by strict rules of 600
Consular certificate admissible as 600
Value of letters and unauthenticated receipts 631
Additional, may be received after time for filing claims has expired 651
None receivable after time for filing claims has expired, when only statement has been presented that claim exists 651
Should be clear and show unvailing appeal to superior authority to justify recovery 693
Belief of witness that a certain estimate of loss would be equitable or just, is insufficient to justify recovery 694
Of citizenship of those interested in successions required 706
Letter received to explain statement of facts 768
Commission must receive all, whether taken ex parte and without notice or not 904
Certificate of consul accepted, as showing nationality 922
Under protocol, Commission bound to receive all documents submitted by either Government 930
Force of, to be judged by Commissioners or umpire 931
In absence of express provisions to the contrary, Commission may adopt whatever means it determines upon to obtain 934
Oral, heard 658, 934
Witness can not discredit by subsequent retraction, corroborated statements once made by him as a governmental authority 934
Being too vague to enable Commission to determine amount of claim, same will be dismissed 937
Where documentary, can not be produced, statements of witnesses accepted. 952
Export duties can not be collected on native products under Venezuelan laws. 810
Expulsion:
Right of government to expel foreigners generally recognized, if they are prejudicial to public order 265
Duty of government expelling to explain reasons of, to government of foreigner 265
Government has right of, against foreigner, for reasons of public interest and safety 266, 696
Should only be resorted to in extreme instances, and must be accomplished in the manner the least injurious to the person affected 696
International tribunals have the right when occasion demands to inquire into reason of 696
Reasons for, being contrary to Venezuelan constitution held insufficient.. 696
Concession indirectly taken away by unlawful, may be compensated for.. 771
Under circumstances of contumely, and upon mere suspicion, will sustain claim for damages 771
Of foreigner justifiable only when person is detrimental to welfare of state, and must be accomplished with due regard to convenience and personal and proper interests of person expelled 914
Every government has right to exclude or expel foreigners prejudicial to public order or welfare 914

Extension of time for submission of claims: Page.
German Commission 582
Italian Commission 648, 650–651
Spanish Commission 921

F.

Faber case 600
Opinions—
Goetsch, Commissioner 603
Zuloaga, Commissioner 608
Duffield, umpire 620
Fanti case 753
Feuilletan case 406
Filtz, J. Ph. F.:
Umpire, Belgian Commission 265
Umpire, French Commission (of 1903) 486
Opinions—
Compagnie Générale des Eaux de Caracas (jurisdiction) 275
Compagnie Générale des Eaux de Caracas (merits) 289
Paquet case (concession) 269
Paquet case (expulsion) 267
Postal claim 271
Fischbach case 520, 526
Flothow case 582
Flutie cases 38
Forced loan, government liable for, made for its benefit by constituent state .. 598
Force majeure, civil war constitutes, and excuses payment of interest 271
Foreigners (*see* Claim; Claimant; Claims; Citizenship; Damages; Expulsion; Revolution):
Entitled to same damages as nationals from civil commotion 10
Right of expulsion or to prohibit entrance of, generally recognized if they are prejudicial to public order 265, 696
Can not claim for unavoidable acts of war 303
Can not recover for acts of unsuccessful revolutionists 344
Can only claim against government for injuries received from insurgents or revolutionists whom it could control 897
May recover for injuries received from insurgents government could control and not otherwise 903
May be expelled when prejudicial to public order or welfare, but expulsion must be accomplished with due regard to convenience and personal and proper interests of person expelled 914
Under international law, states are not responsible to, for damages and injuries inflicted by persons in revolt 923
Franqui case 934
French Commission (of 1903):
Opinions, Acquatella et al. case 487
Personnel 486
Protocol 483
French Commission (of 1902):
Opinions—
Ballistini case 503
Daniel case 507
Decauville Company case 499
Had no jurisdiction over claims subsequent to May 23, 1899 497
Lalanne & Ledour case 501
Le Duc et al. case 497
Rogé case 497
Personnel 496
Protocol 494
Summary of claims 510
Friedericy case 520, 526
Fulda case 526

G.

	Page.
Gage case	164
Gazzurelli, Adelchi, Italian Secretary, Italian Commission	647
Genovese case	174
Gentini case	720
German Commission:	
Opinions—	
Becker & Co. case	520
Beckman & Co. case	598
Bischoff case	581
Brewer, Moller & Co. case	584
Brewer, Moller & Co. case (second)	595
Christern & Co. case	520, 584
Christern & Co. case (second)	597
Daumen case	520
Faber case	600
Goetsch, Commissioner	603, 614
Zuloaga, Commissioner	608, 618
Duffield, umpire	620
Fischbach case	520, 526
Goetsch, Commissioner	547
Zuloaga, Commissioner	548
Duffield, umpire	561
Flothow case	582
Friedericy case	520, 526
Goetsch, Commissioner	547
Zuloaga, Commissioner	548
Duffield, umpire	562
Fulda case	526
Goetsch, Commissioner	542, 543
Zuloaga, Commissioner	544, 545
Duffield, umpire	561
Great Venezuelan Railroad case	632
Kummerow case	520, 526
Goetsch, Commissioner	526, 531
Zuloaga, Commissioner	529, 535
Duffield, umpire	549
Metzger case	578
Mohle case	574
Orinoco Asphalt case	586
Plantagen Gessellschaft case	631
Redler & Co. case	526
Goetsch, Commissioner	539
Zuloaga, Commissioner	541
Duffield, umpire	560
Richter case	575
Valentiner case	562
Van Dissel & Co. case	565
Goetsch, Commissioner	565
Zuloaga, Commissioner	568
Duffield, umpire	568
Wenzel case	590
Personnel	518
Protocol—	
Of February 13, 1903	511
Of May 7, 1903	515
Rules	518
Summary of claims	640
Giacopini case	765
Giusta, William, umpire's secretary, Italian Commission	647
Goetsch, Hermann Paul, German Commissioner, German Commission	518
Opinions—	
Faber case	603
Faber case (second)	614
Fischbach and Friedericy cases	547
Fulda case	542
Fulda case (second)	543

Goetsch, Hermann Paul, German Commissioner, etc.—Continued. Page.
Opinions—Continued.
Kummerow case 526
Kummerow case (second) 531
Redler & Co. case 539
Van Dissel & Co. case 565
Goffart, F., Belgian Commissioner, Belgian Commission 265
Opinions—
Compagnie Générale des Eaux de Caracas (jurisdiction) 272
Compagnie Générale des Eaux de Caracas (merits) 278
Paquet case (concession) 267
Paquet case (expulsion) 265
Postal claim 270
Gorsira, C. S., Netherlands' Secretary, Netherlands Commission 893
Government (*see* Claim; Claimant; Claims; Concession; Contract; Damages; Revolution):
Acts of successful revolution regarded as acts of de facto 7
Responsibility of, for taking of neutral property by successful revolution .. 7
Responsible for approximate and natural consequences of its acts 7
Damages awarded for destruction of property for public benefit by 10
Never compensates for damages suffered in civil commotions 10
Responsibility of Government for acts of successful revolution 17
Right to grant towing monopoly recognized 33
Responsible for property seized for military purposes and damaged in its possession 35
Not responsible for necessary consequences of legitimate act of war 35
Held responsible for work done under contract afterwards violated by both parties 51
Want of notice to, when it is provided for by concession, makes assignment void 73
Responsible for acts of violence committed by troops when under command of officers 142
Not responsible for bonds issued to support unsuccessful revolutions 145
Decision of foreign government as to existence of another de facto, conclusive upon its own citizens 145
Responsible for wrongful seizure of property without reasonable inquiry . 170
Can not be compelled by Commission to acknowledge claimant's performance of contract 172
Contract entered into by minister of public works and governor of Federal District authorized by Chief Executive, is act of 183
Party to a contract, can not declare it void 213
Promise by, to annul existing contract providing for submission under, of questions under it to local courts is illegal 246
Foreigners expelled or whose entrance is prevented, entitled to explanation from, expelling or prohibiting entrance 265
Right of, to expel or prohibit entrance of foreigners prejudicial to public order generally recognized 265
Has right to expel foreigner for reasons of public interest and safety 266
Responsible for damages to persons expending time and money under permit, revoked without sufficient reason 267
Not responsible to foreigners for unavoidable acts of war 303
Responsible for acts of agents, whether directed or ratified by silence or acquiescence 331
Has no power to direct its consul to refuse clearances for passports, based on insufficient reason 331
Can not close by order or decree, ports in hands of revolutionists 331
Responsible for acts of successful revolution from its beginning 388
Can not collect again taxes once paid to de facto revolutionary government 397
Held responsible for wages not positively proven to have been paid 406
Responsible for acts of civil officials, whether commissioned by national, State, county, or municipal authorities 410
Not liable for damages suffered by property in track of war 455
Responsible for acts of successful revolution 458
Not chargeable with acts of unsuccessful revolutionists 458
Responsible for acts of unsuccessful revolutionists 487
Not responsible for acts of unsuccessful revolutionists 487

Government—Continued. Page.
Liability of, for supplies furnished constitutional State ... 503
Not liable for acts of unsuccessful revolution, except by treaty admission. 526
Responsible for acts of administrative officials and naval and military commanders ... 578
Can not close ports in insurgent territory, except by forcible blockade ... 586
Responsibility for acts of officials ... 591
Liable for forced loan for its benefit by constituent State ... 598
Control of, over navigable streams flowing through its territory ... 603
Not liable for damages caused by guerrillas ... 632
Not responsible for acts of revolutionists beyond control ... 666
Relation of revolutionists to, defined ... 666
Possesses the general right of expulsion ... 696
May only expel in extreme instances, and in the manner the least injurious to the person affected ... 696
Liable for wanton acts of officials ... 770
Legitimate, can not enforce second payment of taxes once paid to de facto revolutionary government ... 730
Not responsible for acts of unsuccessful revolution, save for proven negligence ... 730
Rules of Institute of International law as to liability of, for riots, insurrections, or civil war ... 733
Not held responsible for acts of revolution, unless negligence be clearly apparent or proven ... 753
Not held responsible for results of legitimate acts of warfare ... 753
Presumptions are in favor of regularity and necessity of acts of ... 754
Not liable for damages incident to ordinary warlike operations ... 762
Liable for loss on having so taken possession of property as to specially expose it to destruction ... 762
Not responsible for acts of unsuccessful revolution ... 810
Responsible for damages incident to closure of ports, where their being kept open is material element of value of contract made by it ... 820
Not responsible for damages from closure of port, in absence of contract relations with claimant ... 848
De facto, must be one recognized as ruling or supreme power, and not one temporarily in authority in a district or State in revolution ... 896
Not responsible for contract obligations incurred by authorities of an unsuccessful revolution ... 896
Only responsible for seizure of goods or property, made by it through its proper authorities, or by those who had a right to act in its name or behalf ... 896
Negligence of, must be alleged and proved ... 897
Not responsible to aliens for injuries received from insurgents beyond its control ... 897
De facto, defined ... 899
Presumption that it is careful in direction of fire of troops ... 900
Negligence of, must be alleged and proved ... 903
Responsible to aliens for injuries received from insurgents it could control and not otherwise ... 903
Liable to claimant for property taken for maintenance of prisoners left on his estate, without permission and without food ... 904
Charged with interest at legal rate upon claims after expiration of one year from the time Government is presumed to have had notice ... 906
Not responsible for wanton, reckless acts of unofficered troops ... 910
May bring to port vessel found within its territorial waters, to investigate concerning ship, but obliged to treat master and crew with consideration, and complete investigation promptly ... 912
Has right to expel or exclude foreigners prejudicial to public order or welfare ... 914
Responsible for unwarranted acts of officials which have not been punished ... 914
Not responsible to foreigners under international law, for damages and injuries inflicted by persons in revolt ... 923
Under international law, not responsible for damages and injuries caused by persons in revolt ... 931
Held responsible for acts of revolutionists, subsequently appointed to office ... 952
Great Venezuelan Railroad case ... 632

Page.
Grisanti, Carlos F:
Venezuelan Commissioner, American Commission 5
Opinions—
American Electric and Manufacturing Co. Case 246
Manoa Company (Limited) case 228
Orinoco Company (Limited) case 237
Orinoco Steamship Company case 76
Raymond case 255
Rudloff case (merits) 199
Turnbull case 234
Venezuelan Commissioner, Belgian Commission 265
Opinions—
Compagnie Générale des Eaux de Caracas (jurisdiction) 274
Compagnie Générale des Eaux de Caracas (merits) 283
Paquet case (concession) 268
Paquet case (expulsion) 266
Postal claim 270
Venezuelan Commissioner, British Commission 295
Opinions—
Aroa Mines (Limited) case 348
De Lemos case 315
Mathison case 430
Stevenson case 440
Guanta, history of recent sieges 838
Guastini case 730
Guerrieri case 753
Guerrillas, Government not liable for damages caused by 632
Guiatt, Thomas, British Secretary, Venezuelan Commission 295
Gutierrez-Otero, Luis, umpire, Spanish Commission 921
Opinions—
Betancourt case 939
Corcuera case 936
Esteves case 922
Extension of time for submission of claims 921
Franqui case 934
Lozano case 930
Mena case 931
Padrón case 924
Sanchez case 937
Guzmán, Alfaro F. N.:
Venezuelan Commissioner, Spanish Commission 921
Venezuelan Commissioner, Swedish Commission 949
Guzmán, Ricardo R., Mexican agent, Mexican Commission 879

H.

Hague Permanent Court of Arbitration, award of, in preferential question 1057
Harrison, Herbert, British Commissioner, British Commission 295
Hedlund case 952
Heirs (*see* Successions):
May, under law of Venezuela, recover for injuries to decedent but not for damages to personal feelings or reputation 578
Hellmund, Netherlands Commissioner, Netherlands Commission 893
Henriquez (Jacob M.) case 910
Henriquez (J. N.) case 896
Heny case 14
History—
Of recent revolutions in Venezuela 398, 568, 1060
Of recent sieges of Barcelona and Guanta 838

I.

Immigration:
Right of Government to prohibit, of foreigners generally recognized if they are prejudicial to public order 265
Duty of Government preventing immigration of foreigner to explain to his Government reasons therefor 265
Implied contracts (*see* Contract).

Page.
Imprisonment:
Measure of damages for, discussed 329
Damages allowed for unlawful 497
Damages allowed for wrongful 503
Case of illegal 765
Cases of unlawful ..... 765, note
Measure of damages for wrongful, indicated 952
Injuria, defined 733
Injuries (*see* Damages):
Foreigners may recover for, received from insurgents Government could control, and not otherwise 903
Injury:
Defined 344, 558, 666
Discussed 749
Injury to business (*see* Business injury).
Institute of international law, rules of, as to responsibility of states for losses from riots, insurrections, or civil war 733
Insults, damages allowed for, during lawful arrest 164
Insurance, payment by life insurance company for death, disallowed 954
Insurrection (*see* Revolution).
Interest:
Chargeable only from date of demand for compensation unless delay explained 10
Allowed on claim from date of presentation 29
Not allowed on delayed payment because of written waiver of claimant 174
Allowed on money paid Government on illegal contract from date of payment 201
Not allowed if not demanded in claim itself 270
Civil war constitutes force majeure excusing payment of 271
Allowed on unpaid wages 406
Motion for, on awards 413
Under protocol, not allowed on award 413, 658
Not generally provided for on submission to arbitration 421
Allowed at legal rate on ascertained liquidated amount 423
Allowed on claims for damages to property 425
Only legal, allowed under contract to refer controversy to local courts, no such resort being had and the amount of claim being disputed 455
Not allowed in protocol on awards 520
When allowed computed to December 31, 1903 520
In contractual cases where rate of interest is not stated, will be computed at 3 per cent from demand for damages for breach 520
Not allowed as such on claims for injuries to the person 520
Claims based upon contracts stipulating a certain rate of, carry it at that rate from date of breach 520
Compound, refused 584
In the absence of specified rate of, only legal rate recoverable 584, 598
Only legal rate provided by Venezuelan laws, allowed on claims 632
Following Venezuelan law, fixed at 3 per cent on claims 658
In absence of contract, only allowed from date of presentation to Government or Commission 658
Under protocols, can not be allowed by Commission beyond probable termination of labors 665
Where money is loaned for a specific period without, it will nevertheless be allowed after debt falls due 879
Only allowed on amount of loan actually received by debtor 879
Allowed at current rate at time of contracting loan 880
Will be allowed from the time money falls due, irrespective of demand 880
Present legal rate will not control, where debt has been contracted prior to statute 880
Allowed on claims after expiration of one year from the time Government is presumed to have had notice of them 906
Allowed at 5 per cent from date claimants were proved to have been in their right 949
International law:
Of what it consists 185
Does not permit consul abroad to require ship's captain to procure passport as condition precedent to clearing 331
Controls local laws in case of conflict 378

International law—Continued. Page.
Is the law of Mixed Claims Commissions 386
Protocols are to be interpreted by 386
Defined 386, 555
Does not hold a country liable for acts of revolution beyond control of titular government 526
Parent state is not under, liable for damages of unsuccessful revolution... 565
When protocol authorizes decision of questions before Commission, according to "justice" and "absolute equity," well-established principles of, must be applied equitably 666
Rules of, apply to Venezuela, she being recognized as regular member of family of nations 666
Holds government responsible only for seizure of goods or property by government itself, through its proper authorities or by those who had a right to act for it 896
Under, states are not responsible to foreigners for damages and injuries inflicted by persons in revolt 923
In absence of express stipulations in protocol, arbitral court must decide according to 924
Character of, discussed 925
Under principles of, states not responsible for damages and injuries caused by persons in revolt 931
International reclamation (*see* Concession; Contract; International tribunals):
Contract provisions against making, invalid 186
International tribunals (*see* Commission; Jurisdiction):
Competent to decide their own jurisdiction 38
Concession providing they shall not be resorted to, is effective before them 73
Can not consider contract which provides for submission of questions under it without resort to local tribunals and delay or denial of justice.. 151
Ordinarily have no jurisdiction over private contracts, unless there has been denial of justice 182
Judges of their own jurisdiction 183
Can not take jurisdiction of claims pending in local courts 190
Contract providing that questions under it shall be decided under Venezuelan laws by local courts, they must first be applied to before proceeding in 200
Have jurisdiction over claim for damages for breach of collateral promise, notwithstanding contract providing for settlement of controversies by local courts 246
Are superior to local courts and have jurisdiction of case, although also pending in them 322
Are controlled by international law 386
What papers and documents are receivable as evidence before ..... 600, note
Not bound by strict rules of evidence 600
Apply well-established principles of international law 666
Have the right when occasion demands to inquire into the reason for expulsion 696
Will recognize principles of prescription 720
Can only accord damages to citizen or subject of claimant country, taking no account of offenses against nation as such 754
Have jurisdiction over claims of, belonging to subjects of claimant nation at origin, and when Commission was formed 782
Are substituted for national forums which might have had jurisdiction over the subject-matter 819
Jurisdiction of, over claims of corporation, controlled by its nationality and not that of stockholders 906
In absence of express stipulations in protocol, must decide according to accepted principles of international law 924
Called upon to decide on basis of absolute equity, must render judgment according to conscience of arbitrators 924
Interpretation:
Rule as to liability in absence of clear explanation by party who should have given it 556
To be favorable to private rights 557
Rules of 666
For proper, of treaty, circumstances antecedent to execution may be examined 939

	Page.
Interpretation of treaties (*see* Interpretation; Treaties).	
Iribarren, José Vicente:	
Venezuelan Commissioner, Mexican Commission	879
Venezuelan Commissioner, Netherlands Commission	893
Italian claims, defined	720
Italian Commission:	
Opinions—	
On questions of procedure	648
Reception of evidence and claims—	
Agnoli, Commissioner	651
Ralston, umpire	652
Boffolo case—	
Zuloaga, Commissioner	696
Agnoli, Commissioner	697
Ralston, umpire	699
Bottaro case	768
Brignone case—	
Agnoli, Commissioner	710
Ralston, umpire	715
Burelli case—	
Agnoli, Commissioner	655
Zuloaga, Commissioner	656
Ralston, umpire	656
Cervetti case	658
Cesarino case	770
Corvaïa case—	
Agnoli, Commissioner	782
Zuloaga, Commissioner	795
Agnoli, Commissioner (second)	799
Ralston, umpire	802
De Caro case—	
Agnoli, Commissioner	810
Zuloaga, Commissioner	815
Ralston, umpire	816
De Zeo case	693
Di Caro case	769
Gentini case—	
Agnoli, Commissioner	720
Zuloaga, Commissioner	723
Agnoli, Commissioner (second)	724
Ralston, umpire	724
Giacopini case	765
Guastini case—	
Agnoli, Commissioner	730
Zuloaga, Commissioner	745
Ralston, umpire	747
Guerrieri case	753
Martini case—	
Agnoli, Commissioner	820
Zuloaga, Commissioner	833
Ralston, umpire	837
Massardo, Carbone & Co. case—	
Agnoli, Commissioner	706
Zuloaga, Commissioner	708
Ralston, umpire	709
Mazzei case	693
Miliani case—	
Agnoli, Commissioner	754
Agnoli, Commissioner (second)	757
Ralston, umpire	759
Oliva case—	
Agnoli, Commissioner	771
Zuloaga, Commissioner	777
Agnoli, Commissioner (second)	778
Ralston, umpire	779
Petrocelli case	762

Italian Commission—Continued. Page.
Opinions—Continued.
Poggioli case—
Agnoli, Commissioner 848
Zuloaga, Commissioner 858
Ralston, umpire 863
Postal treaty case 665
Revesno et al. case, Ralston, umpire 753
Sambiaggio case—
Agnoli, Commissioner 666
Zuloaga, Commissioner 673
Ralston, umpire 679
Tagliaferro case 764
Personnel 647
Protocol—
Of February 13, 1903 643
Of May 7, 1903 645
Rules 647
Summary of claims 871

J.

Jarvis case 145
Jurisdiction (*see* Local courts; International tribunals):
International tribunals competent to decide their own 38
Defined 75
Of Commission over unsettled claims 144
Discussed 155
Commission has none to decide claims against municipalities 168
Commission has none to compel Government to acknowledge claimant's performance of contract 172
Commission has none over individual claim of creditor against bankrupt. 172
To obtain, of international tribunal over private contract, denial of justice ordinarily necessary 182
Entertained, notwithstanding provision of contract requiring disputes to be submitted to local courts, as it would work inequitably 182
Commission judge of its own 183
International tribunals have jurisdiction of international claims although pending in local courts 185
International tribunals have, over claims for breach of collateral promise, notwithstanding contract providing for settlement of controversies in local courts 246
Belgian Commission has, to decide claims of Belgian corporation, although some stockholders may not be Belgians 271
Not affected by pendency of like question in local courts 322
Commission has none to decide claims of foreign nation as such, against Venezuela 438
Of Commission limited to decide claims of foreigners, subjects or citizens. 438
French Commission (of 1902) had none over claims subsequent to May 23, 1899 497
Commission is a body of limited 665
May be taken under Italian protocol, of claims arising 1898 to 1900, of claims not of "first rank" 706
Recognized over claims originating, at least before date of protocol 709
Extends only over claims of subjects of claimant nation in their origin, and when Commission was formed 782
Of Commission is substituted for that of local courts which might have had jurisdiction over the subject-matter 819
Exchange of notes of foreign offices confers jurisdiction on Commission to decide claims against Mexico 879
Under protocol Mexico Commission has none, to decide claims of Venezuela against Mexico 879
Of international claims commission over claims of corporation, controlled by nationality of corporation and not that of stockholders 906
Where respondent Government sets out that claim is Venezuelan and no contradiction is interposed by claimant Government, claim dismissed for want of jurisdiction 910

Justice: Page.
Defined 344
Meaning of, with relation to international law in international commissions. 666

K.

Kelly case 340
Kummerow case 520, 526

L.

Laches, defined 406
La Guaira Electric Light and Power Company case 178
Lalanne & Ledour case 501
Las Casas, Emilio de:
Venezuelan Secretary, Belgian Commission 265
Venezuelan Secretary, British Commission 295
Lasry case 37
Le Duc et al. case 497
Legal title, recognized as fully in hands of assignees for benefit of creditors.. 597
Letters (*see* Evidence):
Value of, as evidence 631
Received to explain statement of facts 768
Lien, released by acceptance of assignment of property for 250
Limitation, statutes of. (*See* Prescription.)
Loan:
Where made for a specific period without interest, interest will be allowed after debt falls due 879
Premium on unpaid, allowed as resultant damages, but without interest thereon 879
In absence of stipulated rate of interest, will carry current rate at time of contracting 880
Local courts (*see* Jurisdiction):
Have exclusive jurisdiction over contracts providing for reference to them and excluding international claims, unless denial of justice 151
Foreigner subject to jurisdiction of local courts for crimes 165
Have jurisdiction to punish transgressors, citizen or alien, if laws and penalties accord with civilized codes 169
Provision of contract requiring disputes to be referred to, being inequitable under the circumstances, jurisdiction is entertained 182
International tribunals have jurisdiction of claims of foreigners although pending in 185
Have jurisdiction of pending controversies to exclusion of international tribunals 190
Must be first applied to where contract provides for decision of questions under it by 200
International tribunals have jurisdiction of claim for breach of collateral promise, notwithstanding contract providing that questions under it shall be settled by 246
International tribunals have jurisdiction over case which may have been submitted to them, and may act without reference thereto 322
Claimant not compelled to resort to, before appealing to his Government. 410
Under agreement to refer controversy to, only legal interest allowed on claim when amount is contested and no resort had to 455
Commission is substitute for, which might have had jurisdiction over the subject-matter 819
Can not authorize consul resident abroad to require ship's captain to procure passport as condition precedent to clearing 331
Local legislation (*see* International tribunals; Local courts):
Transfer of real estate controlled by 20
Weather-bound vessel not subject to penalties of 29
Meaning of, in protocol defined 81
Alien in jurisdiction subject to them and their penalties, if according to civilized codes 169
Contract providing for decision of questions under it under, and by local courts, claimant must apply to them before appearing in international tribunal 200
Must yield to law of nations in case of conflict 378
Defined 595

Page.
Local legislation—Continued.
Operating against equity, has to be rejected under protocol 719
Relating to prescription, can not be invoked to defeat an international claim 720
Stipulation in concession for resort to, bars jurisdiction of international tribunals 73
Loss of credit, a general claim for, too indefinite and uncertain to be taken into consideration 847
Lozano case 930

M.

Maal case 914
Madsen & Jespersen case 954
Marchiero case 753
Maritime law (*see* Vessel):
Lien for necessary repairs to vessel follows it everywhere 250
Acceptance of assignment in payment of debt for necessary repairs releases lien 250
Consul can not refuse clearances under governmental direction based on insufficient reason 331
Ship's captain can not be required by consul abroad to procure passport as condition precedent to clearing 331
Damages allowed for wrongful refusal of clearance 501, 503
Measure of damages for prevention of employment of vessels 588
Government may bring to port vessel found within its waters, to investigate concerning ship, but compelled to treat master and crew with consideration, and complete investigation promptly 912
Marriage (*see* Conflict of laws):
Woman acquires husband's citizenship by, but on his death this is controlled by law of domicile 438
Martini case 819
Massardo, Carbone & Co. case 706
Mathison case 429
Matos revolution, history of 399, 1060
Mazzei case 693
Measure of damages (*see* Damages).
Meling case 954
Mellor, Gilbert, British agent, British Commission 295
Contentions—
Aroa Mines (Limited) case 344
Preliminary objection to de Lemos case 302
De Lemos case 310
Mathison case 429
Stevenson case 439
Mena case 931
Mendoza, Segundo A.:
Venezuelan Secretary, German Commission 518
Venezuelan Secretary, Italian Commission 647
Metzger case 578
Mexican Commission:
Opinion, Del Rio case 879
Personnel 879
Protocol 875
Rules 879
Summary of claims 888
Miliani case 754
Military service can not affect status of claimant and is not equivalent to naturalization 438
Mines, measure of damages for prevention of working of 589, 819
Mohle case 574
Möller, J., Netherlands Commissioner, Netherlands Commission 893
Monnot case 170
Monopoly:
Right of Government to grant towing recognized 33
Grant of exclusive right to use, for foreign commerce, waterways reserved for coastwise trade, does not prevent opening same to commerce generally 73

Moral persons (*see* Corporations). Page.
Morris, Robert C., American agent 5
Brief, Orinoco Steamship Co. case 107
Replication 119
Mortgage, that it is not canceled of record is technical objection when all bonds are paid or secured against 271, 278
"Most-favored-nation" clause operates only as to claims thereafter arising. 666, 782
Municipalities:
Commission has no jurisdiction to decide claims against 168
Claim for breach of contract of, disallowed as against government 178
Municipal laws (*see* Local legislation).
Murder, elements constituting damages for, discussed 769
Murzi case 849

N.

Nation, international tribunals can not take account of offenses against, as such. 754
Nations, right of, to submit claim of its citizens to Mixed Commission can not be contracted away by citizen 819
National debt (*see* Bonds):
Agreement to pay debt due Spanish subject for services becomes portion of, and will not be canceled by subsequent treaty canceling pending claims.. 936
Nationality (*see* Citizenship; Conflict of Laws; Corporations; Domicile):
Of claim must be that of claimant government at time of origin 74
Corporation belongs to country of formation 271, 273, 275
Death of claimant after presentation of claims does not change, of claims. 439
Of claim must be same at time of origin and presentation 449
Claim dismissed for want of proof of, of other members of firm and their respective interests therein 910
Claim must be of, of claimant government at time of origin 74, 76
Claim must be of same foreign, at time of origin and presentation 449
Jurisdiction of international claims commission controlled by, of corporation and not of stockholders 906
Discussion as to, of corporations ..... 906, note
Of claimant shown by certificate of consul 922
Naturalization:
Proceedings relating to, binding only on parties 38
Certificate of, prima facie evidence only 38
Military service is not equivalent to 438
Declaration of intention to become naturalized is not equivalent to 454
Navigable streams, control of state through which they flow over them 603
Negligence:
Government can not be held responsible when claim is made possible by claimant's 402
Defined 406
Government not responsible for acts of unsuccessful revolution, save for proven 730
Government not held responsible for acts of revolution unless, be clearly apparent or proven 753
That government was guilty of, must be alleged and proved 897
Of government must be alleged and proved 903
Net earnings, defined 466
Netherlands Commission:
Opinions—
Arends case 912
Baasch & Römer case 906
Bembelista case 900
Evertsz case 904
Henriquez (Jacob M.) case 910
Henriquez (J. N.) case 896
Maal case 914
Salas case 903
Personnel 893
Protocol 889
Rules 893
Summary of claims 916
Neutral property (*see* Property).
Noack case disallowed 584

O.

Page.

Officers (*see* Officials):
Destruction of neutral property by soldiers in presence or with authorization of negligent, creates claim 63, 142
Government not responsible for wanton acts of troops without officers ... 910
Officials:
Government responsible for, unless disavowed, and if important actors punished 165
Contract by minister of public works and governor of federal district duly authorized by executive, considered act of government 183
Government responsible for acts of, whether directed or only ratified by silence or acquiescence 331
Government responsible for acts of civil, whether commissioned by national, state, county, or municipal government 410
Government responsible for acts of administrative, and naval and military commanders 578
Responsibility of government for acts of 591
Claim founded on wrongful acts of minor public, should be clear and definite and show unavailing appeal to superior authority to justify recovery 693
Having full knowledge of claim from beginning of reclamation thirty-one years old without action prevents prescription 764
Governments liable for wanton acts of 770
Respondent nation responsible for acts of its, who have depredated property of foreigner without being punished, although complaints were made 847
Award given for loss of crops consequent upon acts of, together with unpunished malefactors 848
Government only responsible for seizure of goods or property when made by its proper, or by those who had a right to act for it 896
Government responsible for acts of, which, when unwarranted, have not been punished 914
State held responsible for acts of, when revolutionists, subsequently appointing them to office 952
Oliva case 771
Orinoco asphalt case 586
Orinoco Steamship Company case:
Memorial 97
Brief of American agent 107
Answer of Venezuelan agent 107
Replication of American agent 119

P.

Padrón case 923
Padrón-Ustáriz, J.:
Venezuelan Secretary, American Commission 5
Venezuelan Secretary, French Commission (of 1903) 486
Venezuelan Secretary, French Commission (of 1902) 496
Paquet case (expulsion) 265
Pardon, state does not assume responsibility for acts of persons pardoned by chief executive in excess of his powers 590
Paris, convention of, of 1854, rule as to ineffective blockade 842
Parker, J. Earl:
Umpire's Secretary, British Commission 295
Umpire's Secretary, Netherlands Commission 893
Partnership:
Proof required of nationality and members of, before award 706
Claim dismissed for want of proof of nationality of other members of firm, and their respective interests therein 910
Passport, damages allowed for delay consequent upon unlawful refusal to furnish 45
Paúl, José de J.:
Venezuelan Commissioner, American Commission 5
Opinions—
American Electric and Manufacturing Co. case 35
Bance case 172
Boulton Bliss & Dallett case 26
Gage case 165

Paúl, José de J.—Continued. Page.
Venezuelan Commissioner, American Commission—Continued.
Opinions—Continued.
Genovese case ... 174
Heny case ... 18
Kunhardt ... 70
Rudloff case (Jurisdiction) ... 189
Rudloff case (Merits) ... 194
Thomson-Houston International Electric Company case ... 168
Torrey case ... 162
Turini case ... 54
Underhill cases ... 45
Woodruff case ... 154
Venezuelan Commissioner, French Commission (of 1903) ... 486
Opinions, Acquatella case ... 487
Venezuelan Commissioner, French Commission (of 1902) ... 496
Opinions—
Ballistini case ... 503
Daniel case ... 507
Decauville Company case ... 499
Lalanne & Ledour case ... 501
Payment, manner of, controlled by provisions of protocol ... 499
Peretti de la Rocca, French Commissioner, French Commission:
Of 1903 ... 486
Of 1902 ... 496
Permit (*see* Concession):
Distinction between, and concession defined ... 268
Personal injury:
Under law of Venezuela heir may recover for, but not for damages to feelings or reputation ... 578
Interest not allowed on claims for ... 520
Personnel:
American Commission ... 5
Belgian Commission ... 265
British Commission ... 295
French Commission (1903) ... 486
French Commission (1902) ... 496
German Commission ... 518
Italian Commission ... 647
Mexican Commission ... 879
Netherlands Commission ... 893
Spanish Commission ... 921
Swedish Commission ... 949
Petrocelli case ... 762
Piton, Charles:
French Secretary, French Commission (of 1903) ... 486
French Secretary, French Commission (of 1902) ... 496
Belgian Secretary, Belgian Commission ... 265
Swedish and Norwegian Secretary, Swedish Commission ... 949
Plantagen Gesellschaft case ... 631
Pleading (*see* Procedure):
Res judicata can not be sustained in an international tribunal upon dismissal without prejudice ... 153
Plumley, Frank:
Umpire, British Commission ... 295
Opinions—
Aroa Mines (Limited) case ... 350
Bolívar Railway Company case ... 388
Cobham case ... 409
Compagnie Générale des Asphaltes case ... 331
Crossman case (interlocutory) ... 298
Davis case ... 402
Davy case ... 410
Diplomatic Debt case ... 423
Feuilletan case ... 406
On motion for interest on awards ... 413
Kelly case ... 340
Mathison case ... 433, 440

Page.
Plumley, Frank—Continued.
Umpire, British Commission—Continued.
Opinions—Continued.
Puerto Cabello and Valencia Railway Co. case 455
Santa Clara Estates Company case 397
Selwyn case 322
Stevenson case 327
Topaze case 329
Umpire, Netherlands Commission 893
Opinions—
Arends case 912
Baasch & Römer case 906
Bembelista case 900
Evertsz case 904
Henriquez (Jacob M.) case 910
Henriquez (J. N.) case 897
Maal case 914
Salas case 903
Poggioli case 847
Ports (*see* Closure of ports):
In hands of insurgents can not be closed except by forcible blockade 586
Postal claim (Belgian) 270
Postal Treaty case 665
Practice (*see* Procedure).
Prescription:
Claim duly presented not barred by delay in settlement 142
Bars right unasserted for forty-three years 161
Municipal statutes of limitation can not bar an international claim 162
International claim not barred by, without laches on part of claimant or his government, in presentation for payment 327
Unless pleaded, will not be recognized 507
Principles of, will be recognized internationally 720
Local laws relating to, can not be invoked to defeat international claim .. 720
Reason for its application ceasing, can not be invoked 764
Does not apply where authorities were notified of the taking of proof thirty-two years previously, and assisted therein 765
"Present Venezuelan civil war" defined 565
Presumptions:
No settled, can be indulged in against the standing of either nation, party to an agreement 691
Are in favor of regularity and necessity of governmental acts 754
In favor of Government as to control of fire of troops 900
Procedure (*see* Dismissal; Dismissal without prejudice; Evidence; Pleading):
Dismissal of claim unskillfully prepared allowed without prejudice 409
Reasonable cause justifying extension of time for filing claims 648
Extension of time for submitting claims only granted upon cause shown .. 648
Further extension granted for filing claims 650
Claim not presented in time, through fault of officials of respondent government, will be dismissed without prejudice 655
Claims should be clear and definite on acts attributed to minor public officials, and show unavailing appeal to superior authority, to justify recovery 693
Negligence of government must be alleged and proved 896–903
Claim dismissed for want of proof of nationality of other members of firm, and their respective interests therein 910
Where respondent government alleges firm of Venezuelan origin and domicile, and claimant government does not contradict, claim dismissed for want of jurisdiction 910
Under protocol, no general extension allowed for presentation of claims .. 921
Under protocol for cause shown, extension may be made for presentation of particular claim 921
In absence of express contrary provisions, Commission may adopt whatever means it determines upon to obtain evidence 934
Profits:
Speculative and conjectural, rejected 771
Allowed when not uncertain or remote, but where reasonably presumed within intent and understanding of parties on entering into contract with respondent nation 820

	Page.
Property:	
Destruction of for public benefit, damages awarded	10
Responsibility of government for, taken for use of armies	17
Neutral, destroyed by soldiers with authorization or in presence of negligent commanders, given rights to claim	63
Taking of for public use involves obligation to compensate owner	172
Of bankrupt does not belong in divisible shares to creditors	172
Arbitrarily destroyed will be allowed for	183
Definition	188
Taking away or destruction of constitutes basis of a claim	189
Assignment of in payment of debt amounts to sale of, and its acceptance releases debtor	250
Of neutrals accidentally destroyed in war can not be compensated for	258
Interest allowed on claims for damages to	425
No allowance for damages suffered by, in track of war	455
Claims for wrongful seizure of or injuries to, bear interest from date of demand for payment of damages	520
Damages allowed for unreasonable detention of, and injuries resultant thereto, where original taking was lawful	581
Ultimately taken by respondent government, it must pay therefor	693
Government liable for so taking possession of, as to specially expose it to destruction	762
Respondent nation responsible for injuries to, by its officials who have been unpunished, although complaints were made	847
Destruction of, forbidden if not compelled by imperious necessity of war.	901
Damages for taking of, allowed at price fixed by claimant, which is not extortionate, it being taken without his consent	904
Government responsible for, taken to maintain prisoners left on claimant's estate, without his permission and without food	904
Protest, taxes apparently legally levied and paid without, can not be recovered.	584
Protocol:	
American	1
Belgian	261
British—	
Of February 13, 1903	292
Of May 7, 1903	294
French—	
Of 1903	483
Of 1902	494
German—	
Of February 13, 1903	511
Of May 7, 1903	515
Italian—	
Of February 13, 1903	643
Of May 7, 1903	645
Mexican	875
Netherlands	889
Spanish	917
Swedish	945
Consideration of claims under, on basis of absolute equity disallowed	182
Technical objection barred by terms of	271
Meaning of "wrongful seizure" in	298
Written statement received as evidence under	321
"Claim," "injury," "seizure," "justice," used in, defined	344
Rules for construction and interpretation of	352
Are to be interpreted by international law	386
Does not permit interest on claims until they are paid	413
Commission has no power not directly conferred by	421
Controls manner of payment of awards	499
Does not permit interest on awards	520
Interpreted as admitting liability for injuries to and seizure of property by revolutionists under Matos	526
Interpreted as admission of liability of Venezuela for acts of revolutionists against property in recent civil war	526
Interpreted to promote recovery for damages by troops of unsuccessful revolution	562
Damages allowed under, for acts of unsuccessful revolution	574
Meaning of, as to extending time for submission of claims	582

Protocol—Continued. Page.
"Local legislation" and "technical objections" defined 595
Does not allow interest on awards 658
Under, Commission can not allow interest beyond probable termination of its labors 666
Rules of interpretation 665
Authorizing decision of questions according to "justice" and "absolute equity," requires equitable application of principles of international law. 666
Interpretation of Italian, relative to claims arising in 1898–1900, not being "of the first rank" 706
Jurisdiction of Commission recognized over claims originating at least, before date of 709
Local legislation operating against equity has to be rejected under 719
Under, Commission is bound to receive and consider all evidence whether taken ex parte and without notice or not 904
Under terms of, no general extension allowed for presentation of claims .. 921
Defense that injury was inflicted upon foreigners by persons in revolt is technical objection and barred by 923
Fact that treaty of 1871 between Venezuela and Spain, denied responsibility for acts of persons in revolt, does not prevent these states from waiving this stipulation, by new agreement 923
In absence of express stipulations in, arbitral court must decide according to international law 924
Under, Commission bound to receive and consider all documents submitted by either Government 930
Under terms of, Venezuela can not invoke principle of international law that States are not responsible for damages and injuries caused by persons in revolt 931
Public debt (*see* Bonds):
Bonds passed as, can not be subject of claim 505
Public employment (*see* Diplomatic employment).
Public policy, agreement by Government to indemnify railroad for carrying troops and munitions of war is void as against 632
Purchasers, assignees for benefit of creditors considered as, for value 597

R.

Railroads, as quasi-public corporations, are bound to carry all persons and freight presented 632
Ralston, Jackson H., umpire, Italian Commission 647
Opinions—
As to time for submitting claims 648
Allowing further extension for filing claims 650
Reception of evidence and claims 652
Boffolo case 699
Bottaro case 768
Brignone case 715
Burelli case 656
Cervetti case 662
Cesarino case 770
Corvaïa case 802
De Zeo case 693
Di Caro case 769
Gentini case 724
Giacopini case 765
Guastini case 747
Guerrieri case 753
Martini case 837
Massardo, Carbone & Co. case 709
Mazzei case 693
Miliani case 759
Oliva case 779
Petrocelli case 762
Poggioli case 863
Postal treaty case 665
Revesno et al. case 753
Sambiaggio case 679
Tagliaferro case 764

Page.
Real property, transfer controlled by local laws 20
Rebellion (*see* Revolution).
Receipts (*see* Evidence):
Unauthenticated, value of, as evidence 631
Recognition, weight of, by foreign government as evidence of de facto government 145
Recordation of instruments:
Want of, can not be invoked by wrongdoer 14
Not required as against wrongdoer 17
Redler & Co. case 526
Reputation, heirs may not recover for damages to, under law of Venezuela ... 578
Res adjudicata, can not be pleaded in international tribunals against a dismissal without prejudice 153
Residence (*see* Domicile):
Discussed 45
Responsibility of government (*see* Government).
Retroactive effect: In absence of express language, treaties are not given 666
Constitution of 1864 of Venezuela, can not be given, so as to constitute one born before that date in Venezuela, a citizen 429
Revesno case 753
Revolution (*see* Bonds; Equity; Foreigners; Government):
Acts of successful, are those of de facto government 7
Responsibility of government for acts of successful 17
Payment of bonds for services rendered in support of unsuccessful, can not be enforced against government 145
Foreigner assumes risk of, in country of his residence 172
Ports in hands of, can not be closed by governmental order or decree 331
Participation in, of claimant must be proved beyond reasonable doubt to destroy his rights 340
Damages not allowed for acts of unsuccessful revolutionists 344
Nation responsible for acts of successful, from its beginning 388
History of recent revolutions in Venezuela 398, 568, 1060
Damages allowed for acts of successful 458
Government not chargeable for acts of unsuccessful 458
Government responsible for acts of unsuccessful 487
Government not responsible for acts of unsuccessful 487
Under international law Venezuela not liable for acts of unsuccessful 526
Venezuela held liable for injuries to, or wrongful seizure of, property by revolutionists in recent 526
Damages allowed under protocol for acts of unsuccessful 562
Under international law parent state not liable for damages of unsuccessful. 565
Damages allowed under protocol for acts of unsuccessful 574
Ports in hands of, can not be closed, except by forcible blockade 586
Government not responsible for acts of, when beyond its control 666
Government not responsible for acts of unsuccessful, save for proven negligence 730
Rules of Institute of International Law as to governmental liability for acts of 733
Government not held liable for acts of, unless negligence be clearly apparent or proven 753
Italian subjects serving under, can not receive award 769
Damages refused for acts of unsuccessful 810
Government not responsible for contract obligations incurred by authorities of unsuccessful 896
Temporarily in authority in district or state, is not de facto government of nation 896
Government not responsible for acts of, when it could not control 897
Government responsible for acts of, when it could control, and not otherwise 903
Under international law States are not responsible to foreigners for damages and injuries inflicted by 923
Under international law States not responsible for damages and injuries caused by 931
State held responsible for acts of officials of, subsequently commissioned by government 952
Revolutionists (*see* Revolution):
Relation to government defined 666

Page.
Revolutions, history of recent Venezuelan 398, 568, 1060–1066
Riaño, Juan, Spanish Commissioner, Spanish Commission 921
Richter case 575
Rivers (*see* Navigable streams).
Riots, rules of Institute of International Law as to governmental liability for acts of 733
Roberts case 142
Rogé case 497
Rudloff case 182
Rules:
American Commission 5
British Commission 296
German Commission 518
Italian Commission 647
Mexican Commission 879
Netherlands Commission 893

S.

Salas case 903
Sambiaggio case 666, 677
Sanchez case 937
Santa Clara Estates Company case 397
Seizure:
Government responsible for damages for, when reasonable inquiry would have shown it baseless 170
Defined 344
Government only responsible for, of goods or property when made by Government itself, through its proper authorities, or by those who had a right to act for it 896
Wrongful, meaning of 298
Wrongful, defined 302
Selwyn case 322
Simmross, Paul, German Secretary, German Commission 518
Sovereignty, collection of duties is act of, which no government can exercise on territory of another 331
Spader case 161
Spanish Commission:
Opinions—
Extension of time for submission of claims 921
Betancourt case 939
Corcuera case 936
Esteves case 922
Franqui case 934
Lozano case 930
Mena case 931
Padrón case 924
Sanchez case 937
Personnel 921
Protocol 917
Summary of claims 942
State:
Responsibility of constitutional government for supplies furnished to 503
Government liable for forced loan for its benefit by 598
Statutes of limitation (*see* Prescription).
Steinworth & Co. case disallowed 584
Stevenson case 327
Stiz case 753
Stockholders, jurisdiction of international claims commission over claims of corporation is controlled by nationality of corporation and not that of 906
Successful revolution (*see* Revolution).
Successions (*see* Heirs):
Proof of citizenship of those interested in, required 706
Discussion of differences between various national rules relating to ..... 710, note
In event of conflict of laws as to, law of domicile of decedent must control 710
Swedish Commission:
Opinions—
Bovallins case 952

Swedish Commission—Continued. Page.
Opinions—Continued.
Christina case ... 949
Hedlund case ... 952
Madsen and Jespersen case ... 954
Meling case ... 954
Ydun Life Insurance case ... 954
Personnel ... 949
Protocol ... 945
Summary of claims ... 954

T.

Taxes (*see* Customs duties; Export duties):
Once paid to de facto revolution, can not be again collected by government ... 397
Apparently legally levied and paid without protest, can not be recovered ... 584
Legitimate government can not enforce second payment of, once paid to de facto revolutionary government ... 730
Tagliaferro case ... 764
Technical objection:
Contention that original mortgage is not satisfied of record when nearly all bonds have been paid and claimant is willing to guarantee against outside ones, is ... 271, 278
Can not be urged against evidence in international tribunals ... 380
Defined ... 595, 719
Defense that damages and injuries are inflicted upon foreigners by persons in revolt is, and barred by protocol ... 923
Objection going to foundation of right, is not ... 748
Tello, Aristides, Spanish agent, Spanish Commission ... 921
Thomson-Houston International Electric Company case ... 168
Topaze case ... 329
Torrey case ... 162
Translation, expenses of, in preparation of claim allowed ... 331
Treaties (*see* Interpretation; Protocol; Retroactive effect):
Rules of construction and interpretation of ... 352
"Most-favored-nation" clause does not compel Italian Commission to follow interpretation made by other Commissions of their protocol ... 666
Rules of interpretration ... 666
"Most-favored-nation" clause operates only as to claims thereafter arising ... 666, 782
Canceling pending Spanish claims will not operate to cancel an admitted debt of Venezuela, payment of which has been promised ... 936
Liquidated obligation not canceled by stipulation in, canceling pending claims ... 939
To assist interpretation circumstances antecedent to execution of, may be examined ... 939
Turini case ... 51

U.

Underhill cases ... 45
Upton case ... 172

V.

Valentiner case ... 562
Valentiner, Guillermo, Swedish and Norwegian Commissioner ... 949
Venezuela:
Being recognized as regular member of family of nations, accepted rules of international law applied to her ... 666
Allowed credit for proportionate share of moneys paid by old Republic of Colombia, on account of debt for which claim is made ... 880
Division between, and Colombia and Ecuador of debts of old Republic of Colombia ... 881
Venezuelan Yellow Book (*see* Appendix) ... 955–1023
Vessel (*see* Maritime law):
Custom-house registry prima facie evidence only as to ownership ... 29
Acceptance of assignment in payment of debt for necessary repairs releases lien ... 250

Vessel—Continued. Page.
Lien for necessary repairs to, follows it everywhere 250
Allowance to owners for unlawful killing of captain of 954

W.

War (*see* Army; Blockade; Bombardment; Claim; Damages; Government):
No damages allowed for business injury as result of 14
Damages for bombardment as legitimate act of, disallowed 35
Claimant assumes risk of, in country of his residence 172
No claim exists for accidental destruction of neutral property in war 258
Civil, constitutes force majeure, excusing payment of interest 271
Nonresponsibility of Government to foreigner for unavoidable acts of 303
Cities offering resistance may be bombarded 318
No allowance for damages suffered by property in track of 455
No allowance to railroad for suspension of traffic caused by necessities of 632
Government not responsible for results of legitimate acts of 753
Government not liable for damages incident to ordinary operations of 762
No compensation allowed for injuries received in the course of battle 900
Destruction of property forbidden, if not compelled by imperious necessity of 901
Certain allowances for damages caused by unavoidable acts of, discussed. 933
Wenzel case 590
Witness:
Can not discredit by subsequent retraction corroborated statements once made as Government authority 934
Statement of, accepted when documentary proof can not be produced 952
Woodruff case 151
Words (*see* Definitions).
Wrongful, defined 558
Wrongful seizure, defined 298, 302

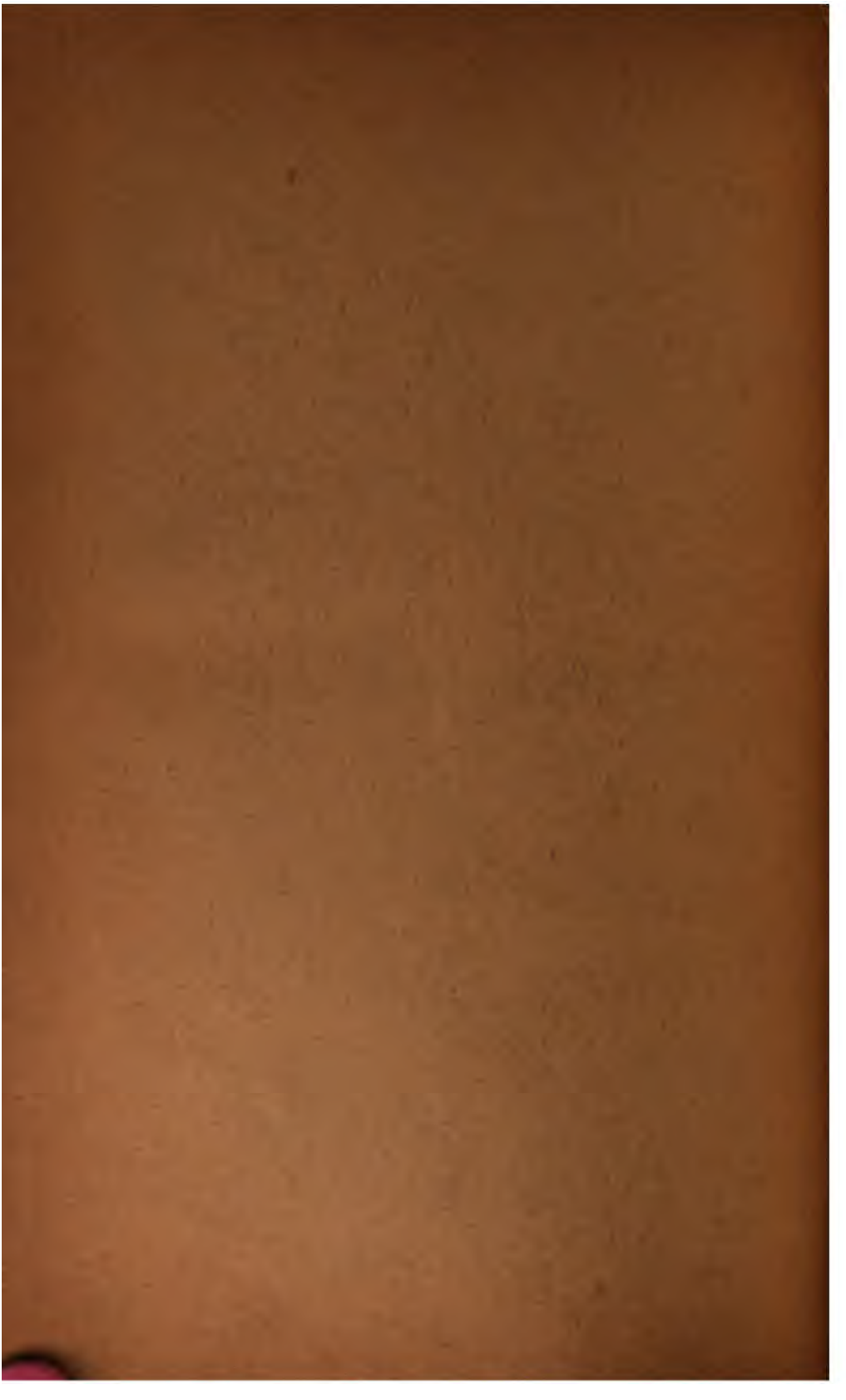
Y.

Ydun Life Insurance case 954

Z.

Zuloaga, Nicomedes:
Venezuelan Commissioner, German Commission 518
Opinions—
Faber case 608
Faber case (second) 618
Fischbach and Friedericy cases 548
Fulda case 544
Fulda case (second) 545
Kummerow case 529
Kummerow case (second) 535
Redler & Co. case 541
Van Dissel & Co. case 568
Venezuelan Commissioner, Italian Commission 647
Opinions—
Boffolo case 696
Burelli case 656
Cervetti case 661
Corvaïa case 795
De Caro case 815
Guastini case 747
Gentini case 723
Martini case 833
Massardo, Carbone & Co. case 706
Oliva case 777
Poggioli case 858
Sambiaggio case 673
Sambiaggio case (second) 677

O



This book should be returned to the Library on or before the last date stamped below.

A fine of five cents a day is incurred by retaining it beyond the specified time.

Please return promptly.

DUE MAY 3 1915

DUE APR 13 1920

NOV -3 1921

DEC 22 1921

DUE NOV 1 1928

DUE DEC 14 1938